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THE COST OF THE TORT SYSTEM

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE, PRODUCTIVITY, AND ECONOMIC GROWTH

OF THE

JOINT ECONOMIC COMMITTEE
CONGRESS OF THE UNITED STATES

NINETY-NINTH CONGRESS

SECOND SESSION

JULY 29, 1986

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THE COST OF THE TORT SYSTEM

TUESDAY, JULY 29, 1986

Congress of the United States,
Subcommittee on Trade,
Productivity, and Economic Growth
of the Joint Economic Committee,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1334, Longworth House Office Building, Hon. Daniel E. Lungren (vice chairman of the subcommittee) presiding.

Present: Representatives Lungren, Fiedler, and Daub.

Also present: Christopher Frenze, professional staff member.

OPENING STATEMENT OF REPRESENTATIVE LUNGREN, VICE CHAIRMAN

Representative Lungren. It gives me great pleasure to welcome the distinguished panel of witnesses before us today. We look forward to your testimony on the important issue of the cost of tort reform.

As a member of the House Judiciary Committee and a former trial attorney, I've had an opportunity to become very familiar with this issue close at hand and recently have noticed, as most of us have, that the debate has intensified as the feeling has grown that tort costs have become out of control. Unfortunately, we find that solid empirical evidence on the cost of the tort system has been hard to come by. In general, the debate on both sides has been forced to rely heavily on anecdotal or incomplete information.

The purpose of this hearing today is to remedy this situation by receiving the testimony of three experts who have recently completed studies on tort costs. If Congress is to act intelligently, it must be fully informed of the facts. The testimony presented this morning will be widely distributed in Congress and in the press, and I hope it will raise the level of debate on the issue of tort reform.

While we all realize that tort costs are large and growing, few of us have a very good idea of the magnitude of such costs or how fast they are growing. How these costs are allocated is another important dimension of the tort reform issue.

If we can answer some of these questions here this morning, we will help lay the groundwork for successful tort reform in the future. If tort costs and insurance expenses can be reduced, we can all benefit through improved international competitiveness and increased job creation.

During the time I practiced law in the courtroom I did a great deal of tort work and got to know of some of the changes taking place in my own State of California as well as in the Federal system. I recall a decade ago, we ran into the medical malpractice crisis in California, where we actually had a doctors' strike. We had people actually leaving the State to practice elsewhere because of the high malpractice insurance rates in California and their judgments. As a result, we had OB/GYN's quitting their practices or part of their practices, perhaps where most needed. The State legislature responded with, I think, some far-reaching legislation which has taken until this year for our California Supreme Court and other courts to finally approve as totally constitutional.

Hopefully, that might give some information to other States as to the direction they might want to take. When we refer to the whole question on a national scale, there are a lot of numbers bandied about, and as I tried to find information, oftentimes those numbers and those figures were bandied about without much empirical data behind them. I am extremely pleased that today we have this panel of experts before us to give us some real information on these facts, as the Congress addresses this issue.

At this time, I would like to invite Congressman Combest from the State of Texas, who is not a member of the Joint Economic Committee for his statement. I know he has a tremendous interest in this issue as well.

STATEMENT OF HON. LARRY COMBEST, A U.S. REPRESENTATIVE IN CONGRESS FROM THE 19TH CONGRESSIONAL DISTRICT OF THE STATE OF TEXAS

Representative COMBEST. Thank you. I do want to compliment you for calling these hearings and preparing them. I do have a statement I would like to submit for the record, if that be agreeable.

I really believe the problem has reached epidemic proportions. It is facing every segment of our economy. It is facing physicians, business, cities, municipalities; anyone who has any type of liability problem at all or is facing the problem because of the amount of premiums. My district is also facing staggering unemployment, which is being aggravated by problems with agriculture and with energy.

As I talk to my constituents all throughout the district of Odessa and Lubbock, Texas, the first things that are discussed are the particular economic conditions that they are dealing with either from agriculture or oil.

The second thing is the difficulty of obtaining liability insurance if they can obtain it at all. Small towns, as well, are finding themselves in the same shape, and I think at this time, many are going uninsured.

What has caused this liability crisis? Some blame the insurance industry; others argue that our society has developed a "tort mentality," under which someone is going to go to court in almost any circumstance.

So some kind of reform is going to take place. Most reform will fall to the States, and I feel that is, in fact, the place it should be addressed initially; but the problem is so severe that there must be some responsible role taken by the Federal Government.

While solving this problem, we must be very careful that we do not undermine the rights of the consumer. It is my desire to see this issue handled responsibly. This desire has prompted me to become a member of the Congressional Liability Insurance and Tort Reform Task Force. This is a bipartisan effort which will take into consideration a wide variety of different viewpoints and may serve as a catalyst for resolving the problem.

I look forward to hearing from the witnesses, a very distinguished group of experts who have been gathered here to discuss the problem and to research it, and I appreciate the fact that you are here today, and we have to do something about this problem.

Thank you, Mr. Chairman.

[The prepared statement of Representative Combest follows:]

PREPARED STATEMENT OF HON. LARRY COMBEST

MR. CHAIRMAN, THE LIABILITY INSURANCE CRUNCH IS A PROBLEM THAT HAS REACHED EPIDEMIC PROPORTIONS. ALMOST EVERY FACET OF OUR SOCIETY IS AFFECTED WITH MANY BUSINESSES, PHYSICIANS AND GOVERNMENT ENTITIES FINDING IT DIFFICULT TO IMPOSSIBLE TO OBTAIN AFFORDABLE LIABILITY INSURANCE.

MY DISTRICT IN WEST TEXAS IS FACING DIFFICULT ECONOMIC TIMES, BUT THE BURDEN OF OBTAINING LIABILITY INSURANCE HAS EXACERBATED THE SITUATION TO THE CRITICAL POINT. THE RESIDENTS OF ODESSA, TEXAS ARE LIVING WITH AN UNEMPLOYMENT RATE THAT HAS TOPPED 20 PERCENT AS A RESULT OF THE DECLINE IN OIL PRICES. AS I VISIT THE 19TH DISTRICT, THESE PEOPLE TELL ME FIRST OF THE ECONOMIC HARDSHIP POSED BY THE CURRENT CONDITION OF THE AGRICULTURE AND OIL AND GAS INDUSTRIES. DIFFICULTY IN OBTAINING AND AFFORDING LIABILITY INSURANCE VERY OFTEN RANKS SECOND ON THEIR LIST OF TROUBLES.

SMALL TOWNS ACROSS THE UNITED STATES LIKE ODESSA ARE FINDING THEMSELVES IN SEVERE ECONOMIC STRAITS AS LIABILITY INSURANCE EXPENSES SKYROCKET. IN FACT, SOME TOWNS ARE EXPENDING MORE FOR INSURANCE PREMIUMS THAN FOR BASIC SERVICES SUCH AS POLICE AND

FIRE PROTECTION. LAST YEAR, AMERICANS SPENT ON AVERAGE 60 PERCENT MORE IN LIABILITY INSURANCE PREMIUMS THAN THEY DID IN 1983. SOME INDUSTRIES HAVE SEEN INCREASES AS HIGH AS 300 PERCENT IN THE SAME PERIOD.

WHAT HAS CAUSED THIS LIABILITY CRISIS? WHILE SOME BLAME THE INSURANCE INDUSTRY, OTHERS ARGUE THAT OUR SOCIETY HAS DEVELOPED A "TORT MENTALITY" EAGER TO GO TO COURT OVER ANY DISPUTE. WHATEVER THE CAUSE, IT IS CLEAR THAT SOME KIND OF REFORM IS ESSENTIAL. THE NUMBER OF PRODUCT LIABILITY SUITS FILED IN FEDERAL COURTS JUMPED FROM 1,600 IN 1974 TO 13,554 LAST YEAR. AS THE COSTS OF A LITIGOUS SOCIETY BECOME INCREASINGLY APPARENT, SO DOES THE NEED TO PLACE SOME RESTRAINT ON ITS GROWTH. AT THE SAME TIME, WE MUST BE CAREFUL NOT TO UNDERMINE THE RIGHT OF CONSUMER PROTECTION IN THE REFORM PROCESS. CLEARLY, THERE ARE LEGITIMATE CASES THAT MUST BE REDRESSED BY THE JUDICIAL SYSTEM.

MANY REFORMS WILL FALL TO THE STATES, WHERE AN ARRAY OF TORT REFORM BILLS MAY BE CONSIDERED. ALTHOUGH THE STATES WILL PLAY A LEADING ROLE, THE INSURANCE DILEMMA HAS BECOME SO SEVERE THAT SOME FEDERAL RESPONSE MAY ALSO BE NEEDED. IT IS MY DESIRE TO SEE THIS ISSUE HANDLED RESPONSIBLY THAT PROMPTED ME TO BECOME A MEMBER OF THE CONGRESSIONAL LIABILITY INSURANCE AND TORT REFORM TASK FORCE. THIS IS A BIPARTISAN EFFORT WHICH WILL TAKE INTO

CONSIDERATION A WIDE VARIETY OF DIFFERENT VIEWPOINTS AND WHICH MAY SERVE AS A CATALYST FOR RESOLVING THE PROBLEM.

IT IS MY HOPE THAT THE TESTIMONY GIVEN TODAY WILL SHED SOME LIGHT ON ONE OF THE AREAS WHERE THE LIABILITY INSURANCE CRISIS HAS ITS ROOTS -- OUR NATION'S TORT SYSTEM. I LOOK FORWARD TO HEARING WHAT OUR WITNESSES HAVE TO SAY. WE MUST HAVE THE FACTS, FREE FROM POLITICAL INFLUENCE, IF WE ARE TO SUCCESSFULLY END THE LIABILITY INSURANCE SITUATION THAT BURDENS NEARLY EVERY FACET OF OUR SOCIETY.

THANK YOU, MR. CHAIRMAN.

Representative **Lungren**. Today we have before us, Mr. James Kakalik from the Institute for Civil Justice of the Rand Corp.; Mr. Andrew Schotter, New York University; and Mr. Robert Sturgis of Tillinghast Risk Management.

At this time, I would ask Mr. Kakalik to present his testimony. I will just ask if you might summarize your testimony.

Mr. **Kakalik**. Certainly.

Representative **Lungren**. We will make your formal statement a part of the record, but if you summarize it, we might have a chance for more questions and for more answers.

STATEMENT OF JAMES S. KAKALIK, PH.D, THE INSTITUTE FOR CIVIL JUSTICE, THE RAND CORP.

Mr. **Kakalik**. Rand undertook this study of costs and compensation paid in tort ligitation, because there is a lot of rhetoric but there has been very little hard data about what the litigation system really costs.

This study presents an estimate of the total bill to the Nation, without making any policy conclusion or judgment. What we found was that our nation paid $28 billion to $35 billion in tort ligitation in 1985, and the plaintiffs got about half of every dollar spent. The remainder was consumed by the civil justice system in legal fees on both sides, court costs, and other expenses such as the value of time litigants spent on their lawsuits.

I want to stress that this study, which we have just completed, focuses on lawsuits, not insurance claims. We focus on lawsuits filed in Federal and State courts of general jurisdiction, which result in about 90 percent of all the compensation paid in tort litigation. As I said, we exclude expenditures for insurance claims that are not lawsuits. We also exclude expenditures in small claims court and in other tort litigation in courts of limited jurisdiction.

We present a range for our estimate of the total bill to the Nation for the current court litigation system.

We made two estimates. The first we made by starting at the top and working down. We started with the insurance industry aggregate data in direct losses and expenses actually paid in 1985, added self-insurance expenditures, and then separated out the claims from the lawsuits.

We made our second estimate in an entirely different way, starting from the bottom up. We took data from surveys of individual tort lawsuits. We inflated those numbers to 1985 appropriately and then we multiplied by the number of tort lawsuits filed to make a national estimate. As I said, the total expenditure nationwide for tort litigation in State and Federal courts of general jurisdiction was between $28 billion and $35 billion in 1985. Of that total, plaintiffs received $13 billion to $15 billion in net compensation, after deducting all of their litigation costs.

So, to deliver this $13 billion to $15 billion in net compensation to injured parties, the tort litigation system expended $15 billion to $19 billion in transaction costs. The injured plaintiff received approximately 45 percent of the total expenditures in net compensation.

One of the things we did was to compare tort cases involving motor vehicles and all other torts. Auto torts account for approximately half of all tort filing in courts of general jurisdiction, and they also account for approximately half of the total compensation paid. The plaintiffs' legal fees and expenses as a percent of total compensation are essentially the same for auto tort and other tort cases—about 30 to 31 percent of total compensation; however, the defendants' costs of litigation differ significantly. For auto tort cases, which are usually relatively straightforward, defense legal fees and expenses are an estimated 16 percent of compensation. For other nonauto tort cases, which are often more complex, the defendants' legal fees and expenses are much higher—32 percent of total compensation.

You raised the question, how fast is the tort system growing? Well, the answer to that question depends on what part of the system you are considering. The compensation paid, for example, over the last 5 years has been growing about 12 percent annually for auto claims and 15 percent for all other torts. That is a growth rate of about twice the rate of growth in the Consumer Price Index.

On the other hand, growth in the number of tort lawsuits filed nationwide has averaged 3 percent per capita since 1981. So the growth is really in expenditures rather than in the number of lawsuits.

On the defense cost side, the average growth rate in defendants' legal costs for auto tort cases was 6 percent annually, whereas for all other torts it was 15 percent.

So in summary, plaintiffs who filed tort lawsuits in State and Federal courts of general jurisdiction received approximately half of the $28 billion to $35 billion spent in 1985. The costs of litigation consumed the other half.

I will be happy to try and answer any questions you may have.

[The prepared statement of Mr. Kakalik, together with an attachment, follows:]

PREPARED STATEMENT OF JAMES S. KAKALIK

COSTS AND COMPENSATION PAID IN TORT LITIGATION: TESTIMONY BEFORE THE JOINT ECONOMIC COMMITTEE OF THE U.S. CONGRESS

James S. Kakalik and Nicholas M. Pace

July 1986

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PREFACE

This Paper documents testimony before the Subcommittee on Trade, Productivity, and Economic Growth, Joint Economic Committee, United States Congress, on July 29, 1986. It incorporates minor revisions to the original testimony. The revisions do not significantly affect the findings of the study.

The research described in this testimony is derived from an ICJ study recently completed by James Kakalik and Nicholas Pace on the costs and compensation in tort litigation. The study was conducted as part of the Institute's ongoing program of research on the American civil justice system. A complete discussion of the study's data, research, and findings will be published in a Rand Report.

Testimony Presented July 29, 1986
before the Subcommittee on Trade, Productivity, and Economic Growth
of the Joint Economic Committee
of the Congress of the United States

James S. Kakalik, Ph.D.
The Institute for Civil Justice of The Rand Corporation[1]

COSTS AND COMPENSATION PAID IN TORT LITIGATION

This testimony summarizes preliminary results of recently completed Rand research.[2] The full report on the study is being technically reviewed, and will be published in late 1986.

SCOPE OF THIS STUDY

Many people are concerned about the amount of society's resources now being allocated to civil liability litigation. But as with many long-standing issues, neither critics nor defenders of the tort system have had much solid evidence to support their views. Instead, anecdotes abound and misinformation is plentiful. The facts are hard to gather because most litigation costs and compensation payments are private expenditures, and are not reported publicly.

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[1] The Institute for Civil Justice, established within The Rand Corporation in 1979, performs independent, objective research on the civil justice system. The Institute's principal purpose is to help make the civil justice system more efficient and more equitable by supplying policymakers with the results of empirically based, analytic research. The Rand Corporation is a private, nonprofit institution, incorporated in 1948, which engages in nonpartisan research and analysis on problems of national security and the public welfare. The views and conclusions expressed in this testimony are those of the authors and should not be interpreted as representing those of The Rand Corporation or of any of the organizations sponsoring its research.

[2] Minor revisions of the preliminary numbers presented at the hearing have been incorporated here; those revisions do not significantly affect the findings of the study.

We undertook this study to provide empirical evidence on the following issues:

- What was the total expenditure nationwide for tort litigation terminated in state and federal courts of general jurisdiction in 1985?
- How much of the total was spent for the various costs of the tort litigation system: plaintiffs' and defendants' legal fees and other litigation expenses, the value of litigants' time spent on the lawsuit, the value of time spent by insurance personnel, and the costs of operating the courts?
- How much of the total was net compensation to plaintiffs?
- How do litigation costs and compensation paid differ for torts involving motor vehicles and all other torts?
- How fast is the tort system growing?

This study focuses on lawsuits filed in federal district courts and in state trial courts of general jurisdiction--which result in about 91 percent of all compensation paid in tort litigation--because it is for those cases that the most reliable data exist. The study excludes: (1) all expenditures for insured and self-insured claims that did not involve lawsuits, and (2) all expenditures for small claims and for tort litigation in courts of limited jurisdiction.

This study presents a range for the total bill for our current tort litigation system. We made two estimates. We used available published and unpublished information from the insurance industry, data from surveys of lawsuits and claims, and information on the number of lawsuits terminated in 1985. We made our first estimate from the top down, starting with insurance industry aggregate data on direct losses and expenses paid in 1985, adding self-insurance, and then separating out payments for claims that were not lawsuits. We made our second estimate from the bottom up, starting with data from surveys of individual tort lawsuits, appropriately inflating the numbers to 1985, and then multiplying by the number of tort lawsuits terminated to make a national estimate. The two estimates differ from each other, and since we have no firm basis for believing one is more reliable than the other, we present ranges of expenditure estimates.

OUR NATION'S BILL: TOTAL COSTS AND COMPENSATION PAID IN TORT LITIGATION

We estimate that the total expenditure nationwide for tort litigation terminated in state and federal courts of general jurisdiction in 1985 was between $27 and $34 billion. These expenditures for the nearly one million tort lawsuits terminated annually in state and federal courts of general jurisdiction[3] include compensation paid to plaintiffs, legal fees and related expenses to both plaintiffs and defendants, insurance company claims processing costs for claims in suit, the value of litigants' time spent, and the costs of operating the court system for these cases.

TOTAL COSTS OF TORT LITIGATION

Of the $27 to $34 billion, $14 to $19 billion was spent for the various costs of the tort litigation system, not including the net compensation paid to plaintiffs.

The breakdown of the total costs for defendants, plaintiffs, and the courts is as follows:

Defendants' Costs of Litigation

Defendants' total costs for tort litigation terminated in courts of general jurisdiction in the United States in 1985 were an estimated $7 to $10 billion: $4.2 to $5.7 billion for legal fees and related expenses, $0.7 billion for insurance company costs of processing claims in suit, and about $2.5 to $3.5 billion representing the value of defendants' non-lawyer time and other expenses. See Table 1.

The average tort lawsuit closed in 1985 resulted in an estimated $4,900 to $6,600 in defendants' legal fees and related expenses.

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[3] The number of tort lawsuits terminated in state and federal courts of general jurisdiction was approximately 866,000 in 1985. This included 827,000 in state and 39,000 in federal courts. Tort litigation related to motor vehicles constituted just over half of the total case terminations.

Table 1

DEFENDANTS' COSTS OF TORT LITIGATION TERMINATED IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985

($ billion)

Type of Cost	Rand Estimate 1 Primarily based on Insurance Industry Data	Rand Estimate 2 Primarily Based on Lawsuit Survey Data
Defendants' legal fees and expenses	4.2	5.7
Claims processing cost for lawsuits	0.7	0.7
Value of defendants' time and other expenses	2.5	3.5
Total costs to defendants	7.4	9.9

Plaintiffs' Costs of Litigation

Out of the total compensation that plaintiffs received they paid $6 to $7 billion in legal fees and expenses and the value of plaintiffs' time spent on the litigation was about $1 billion. See Table 2.

The average tort lawsuit concluded in 1985 resulted in an estimated $6,700 to $8,300 in plaintiffs' legal fees and expenses, which was approximately 30 to 31 percent of total compensation paid to plaintiffs.

Court Expenditures

Court expenditures are defined as those by any level of government (federal, state or local) for processing tort cases in the court system. The total court expenditure nationwide, net of court fees paid by tort litigants, was an estimated $0.5 billion.

COMPENSATION PAID IN COMPARISON WITH TOTAL COSTS OF TORT LITIGATION

Of the $27 to $34 billion total national expenditure in 1985, plaintiffs received $19 to $24 billion in total compensation, or about $13 to $15 billion in net compensation, after deducting all their litigation costs. See Table 3.

Table 2

PLAINTIFFS' COSTS OF TORT LITIGATION TERMINATED IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985

($ billion)

Type of Cost	Rand Estimate 1 Primarily based on Insurance Industry Data	Rand Estimate 2 Primarily Based on Lawsuit Survey Data
Plaintiffs' legal fees and expenses	5.8	7.2
Value of plaintiffs' time and other expenses	0.7	1.1
Total costs to plaintiffs	6.5	8.3

Table 3

COMPENSATION PAID IN COMPARISON WITH TOTAL COSTS OF TORT LITIGATION TERMINATED IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985

($ billion)

Type of Expenditure	Plaintiffs	Defendants	Courts	Total
Total compensation	19.1 - 23.6	19.1 - 23.6	NA	NA
Total costs of litigation	6.5 - 8.3	7.4 - 9.9	0.5	14.4 - 18.7
Net compensation	12.6 - 15.3	NA	NA	12.6 - 15.3
Total expenditure	NA	26.5 - 33.5	0.5	27.0 - 34.0

NOTE: The first number in the range is the Rand estimate primarily based on insurance industry data, and the second number is the Rand estimate primarily based on lawsuit survey data.
NA = Not Applicable.

The average total compensation paid per lawsuit concluded in 1985 in a court of general jurisdiction was in the range of $22,000 to $27,000.

To deliver this $13 to $15 billion in net compensation, the tort litigation system expended $14 to $19 billion in transactions costs. These costs included $10 to $13 billion in combined defendants' and plaintiffs' legal fees and expenses, $0.5 billion in court expenditures, and an additional $4 to $5 billion in the value of the time spent by litigants and their employees.

In sum, of all the money paid in compensation and legal fees and related expenses of tort litigation, the injured plaintiff receives approximately 56 percent in net compensation. The litigation system consumes the rest. If we add the value of the time spent by the litigants to the costs, the injured parties' net compensation sinks to 46 percent of the total expenditures.* All the components of costs and compensation are shown graphically in Fig. S.1.

COMPARISON OF AUTO TORT AND OTHER TORT LITIGATION EXPENDITURES

How do litigation costs and compensation differ between torts involving motor vehicles and all other torts? Auto torts accounted for about half of all tort filings in courts of general jurisdiction in 1985, and also about half of the total compensation paid. See Table 4.

The legal fees and expenses paid by plaintiffs as a percent of total compensation were essentially the same for auto tort (31 percent) and other tort cases (30 percent). However, defendants' costs of litigation differ significantly. For auto tort cases, defense legal fees and expenses were an estimated 16 percent of total compensation. For other (non-auto) tort cases, defense legal fees and expenses were much higher, 30 percent of total compensation paid.

The plaintiffs' net compensation as a percentage of the total expenditures was 52 percent for auto torts and 41 percent for all other torts. This difference primarily reflects the relatively higher defendants' litigation costs for non-auto torts.

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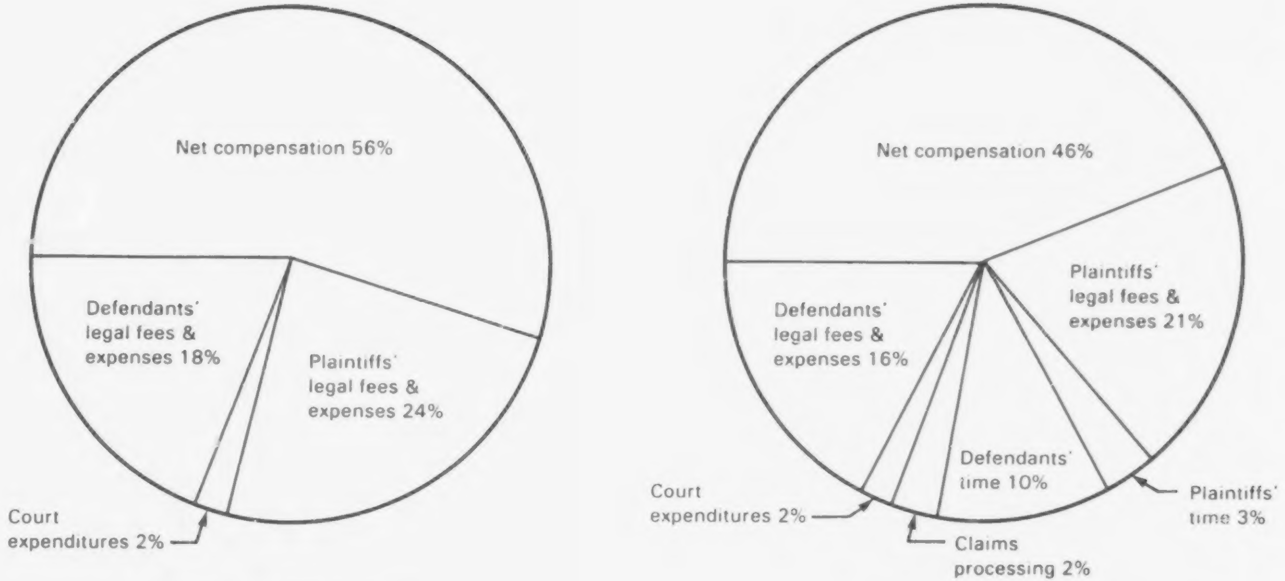
* Our two different estimation techniques yielded results that were relatively close to one another. The most important number, the plaintiffs' net compensation as a percentage of the total expenditures, was 47 percent using one method and 45 percent using the other.



Percentages of total expenditures
excluding value of litigants'
time and claims processing

Percentages of total expenditures
excluding value of litigants'
time and claims processing

Fig. S.1—Costs and compensaton paid for the average tort lawsuit terminated in 1985
(Average gross compensation paid=$22,000 to $27,000)

Table 4

AUTO AND OTHER TORTS: COSTS OF LITIGATION AND COMPENSATION PAID IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985

($ billion)

Type of Expenditure	All Torts	Auto Torts	Other Torts
Costs to plaintiffs	7.4	3.3	4.1
Costs to defendants	8.6	2.8	5.8
Court Expenditures	0.5	0.2	0.3
Total costs of litigation	16.5	6.3	10.2
Net Compensation Paid	14.0	6.8	7.2
Total expenditures	30.5	13.1	17.4

NOTE: Dollars shown are the average of estimate 1 and estimate 2.

GROWTH OF THE TORT SYSTEM

Although the main focus of our study has been analysis of litigation costs and compensation paid in 1985, in the course of our research we have also compiled some data on the rate of growth in the tort system.

How fast is the tort system growing? That depends on what part of the system you are considering. In terms of tort lawsuits filed, we estimate that the annual growth rate has averaged 3.9 percent since 1981--about 3.0 percent per capita.

However, the growth rate in the expenditures for the tort system has been higher. Although we do not have precise data on the growth rate in expenditures for tort lawsuits, we can get a reasonable idea of that rate by looking at the growth rate in amounts paid per claim by insurers over the last five years. The following figures include both claims involving lawsuits and claims for which no lawsuit had been filed.[5]

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[5] Of all insured liability compensation paid in 1985, we estimated 46 percent was paid for claims involving lawsuits.

The average annual growth rate in liability compensation paid per claim over the past five years has been about 12 percent for auto claims and 15 percent for other tort claims, considerably higher than the 7 percent average growth in the Consumer Price Index during the same years. The average growth rate in insured defendants' legal fees and expenses paid per liability claim over the past five years has been about 6 percent for auto and 15 percent for other tort claims. Thus, other non-auto tort expenditures per claim are growing faster than auto tort expenditures per claim.

SUMMARY

Plaintiffs with tort lawsuits in state and federal courts of general jurisdiction received approximately half of the $27 to $34 billion spent in 1985. The costs of litigation consumed the other half.

OTHER RECENT STUDIES

Two recent studies address topics related to this Rand report. The Tillinghast study[6] estimated that $68 billion was spent on the U.S. tort system in 1984 and that "only 25 percent of tort costs go to victims to compensate economic loss." The $68 billion dollar figure is higher than ours because it includes the cost of insurance premiums that cover claims, lawsuits, and the operation of the insurance system. We only report on compensation and costs directly associated with tort lawsuits. The 25 percent figure is a Tillinghast estimate of the compensation for economic loss, and is not the total compensation paid to plaintiffs in lawsuits.

The New York University study[7] estimated that the administrative costs of the tort system in 1984 were $9 to $27 billion. They suggest that the true number lies "somewhere in the middle of this range (i.e., between $15 and $20 billion)." This finding is nearly the same as our finding that the total transactions costs of the tort litigation system in 1985 were between $14 and $19 billion. Our estimated range is narrower primarily because we used three additional types of information: unpublished insurance industry data, 1984 tort filings (released by the National Center for State Courts in July 1986), and the University of Wisconsin lawsuit survey computer data tapes.

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[6] Robert W. Sturgis, *The Cost of the U.S. Tort System: An Address to the American Insurance Association*, Tillinghast, Nelson, and Warren, Inc., Simsbury, Connecticut, November, 1985.

[7] Andrew Schotter and Janusz Ordover, *The Cost of the Tort System*, Starr Center for Applied Economics, New York University, March 1986.

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1986

A special bibliography (SB 1064) provides a list of other Rand publications in the civil justice area. To request the bibliography or to obtain more information about The Institute for Civil Justice, please write the Institute at this address: The Institute for Civil Justice, The Rand Corporation, 1700 Main Street, P.O. Box 2138, Santa Monica, California 90406-2138, (213) 393-0411.

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For release upon presentation of testimony
scheduled for 10 a.m. (EDT), Tuesday, July 29

Rand Institute for Civil Justice Study:

NATION PAID $28-TO-$35 BILLION TORT LITIGATION BILL
IN 1985; PLAINTIFFS GOT ABOUT HALF OF EVERY DOLLAR

WASHINGTON, D.C., July 29 -- Plaintiffs received about half of the $27.7-to-$34.7 billion the nation spent last year on tort litigation, James S. Kakalik, the principal investigator of a study by the Rand Corporation's Institute for Civil Justice, told the Joint Economic Committee of the Congress today.

The remainder, he said, was consumed by the civil justice system in legal fees on both sides, court costs and other expenses, including the value of time spent by parties to the litigation and by insurance claims staff.

Kakalik's analysis is based on previously unanalyzed data gathered by the institute for a report scheduled for release later this year.

The study focuses on federal and state courts of general jurisdiction and excludes small claim and other courts of limited jurisdiction.

Tort litigation embraces all court filings alleging liability for death, personal injury or property damage.

In his testimony Kakalik also reported these findings:

o To get $12.5-to-$15.4 billion in net compensation to the injured parties, the costs of litigation were $15.2-to-$19.3 billion.

FIRST ADD Nation Paid...

o Cases involving motor vehicles, which are usually relatively straightforward, accounted for nearly half of the tort filings in 1985 and also about half of the total compensation paid. Plaintiffs' legal fees and expenses were about 31 percent of the compensation paid for those cases while defendants' legal fees and expenses were about 16 percent in addition to the total compensation paid.

o For other tort cases -- often more complex -- the picture was different. Plaintiffs' legal fees and expenses were about the same percentage as for motor vehicle cases; but defendants' legal fees and expenses were higher -- nearly 32 percent in addition to the total compensation paid.

o How fast is the tort system growing? That depends: The average growth rate in total compensation paid out per claim over the past five years was 12 percent for motor vehicle claims and 15 percent for other claims -- twice the rate of the Consumer Price Index's growth. On the other hand, the annual growth rate in the number of lawsuits filed nationwide has averaged 3 percent per capita since 1981.

o The average growth rate in defendants' legal costs paid per claim has been approximately six percent for motor vehicle and 15 percent for all other tort claims.

Rand undertook the study, Kakalik said, because "there is widespread concern about the amount of resources now being allocated to civil liability litigation. Until now, there has been little hard data about what the system really costs. This study presents an estimate of the total bill without making any judgments or policy recommendations."

The Institute for Civil Justice is a separate research arm within Rand, funded by the pooled contributions of more than 200 corporations, foundations, other organizations and individuals.

Headed by Donald B. Rice, president, Rand is a private nonprofit institution engaged in research and analysis of problems in national security and domestic affairs. It also operates the Rand Graduate School of Policy Studies, which awards doctoral degrees in policy analysis.

Representative LUNGREN. The next witness we have is Mr. Andrew Schotter of New York University.

STATEMENT OF ANDREW SCHOTTER, ASSOCIATE PROFESSOR OF ECONOMICS, NEW YORK UNIVERSITY, AND CODIRECTOR, C.V. STARR CENTER FOR APPLIED ECONOMICS, NEW YORK UNIVERSITY

Mr. SCHOTTER. Thank you. In the few minutes I have to talk, I would like to review the results of a study I completed at New York University that tried to estimate the administrative costs of the tort system.

Before I start, I would like to make a distinction between what we're calling administrative costs of the system and what you could call the allocative or incentive costs of the system.

The allocative costs of the tort system or any other system are the costs that result because the system creates incentives which lead to the misallocation of resources. An example of that is the medical profession.

As jury awards increase over time, we know that insurance premiums increase as well. Now, to the extent that these premiums are increasing, not because they are reflecting increases in the riskiness of medical practices, but reflecting some types of misjudgment on the part of jurors, we find that insurance premiums are sending out incorrect signals to the medical practitioners in the country.

As a result, these false signals start to distort behavior. As was said before, we find that doctors leave certain specialties like obstetrics and gynecology and we also find that they start to practice defense types of medicine—overprescribing diagnostic tests, et cetera.

As a result, we get a misallocation of resources; namely, misallocation of doctors across fields of specialization and the misallocation of diagnostic equipment and facilities to patients.

Now, these misallocations I will claim are extremely costly to the economy, but to my knowledge I don't know of any study that has actually measured them.

The studies that have been done, like the ones that are being presented today, are on the administrative costs of the system, and by administrative costs I mean the bureaucratic costs that are incurred by society just to administer the system of conflict resolution that we have in the States today.

Now, to measure these costs, you have to basically place a cost on each of the participants in the system; namely, you have to place a measurement on the insurance company costs that are made, the defense costs and, in these cases, you have to place a cost on the plaintiff's side of the litigation. You have to put a cost on court costs, government costs, baliffs, stenographers, jurors, the cost of expert witnesses and the time lost in litigation by the litigants.

Now let me say one other thing and that is that in our study we did not include awards in the system as a cost. We consider awards to be merely transfers of resources from one party to another and not a cost of a system. We did our study in two basically different ways:

One relies on the insurance company data and is what Mr. Kakalik calls the top down approach. The other on the cost of litigation looking at the number of cases filed and in placing the cost on them.

Our estimates are presented in table 1 of my prepared statement, but to summarize them let me say that four of the estimates were in the range of $10 to $14 billion; eight were in the range of $14 to $20 billion, and four were in the range of $22 to $27 billion.

Basically, we used 16 different calculations or 16 different ways to get at this number, and that's the way the estimates broke down.

The mean cost was $16.5 billion and the median was $14 billion.

Just to put these costs into perspective, if you take the biggest estimate that we had; namely, the $27 billion estimate, this is in 1984, and you let that cost grow at 6 percent a year from 1984 to 1990 as an extremely conservative growth rate, then you see that by 1990 we'd be spending $38 billion a year to administer the tort system.

And if you add up those costs over those 6 years, the sum of them will equal $199 billion.

Now, part of the problem is, of course, that that's an awful lot of money to be spending on administering a system—any system, I might add.

Finally, let me just say one thing and that is that it's not clear that on the basis of any of these estimates that there are policy conclusions that follow.

Namely, if you estimate the cost of the tort system to be $10 billion or $20 billion or $50 billion, whether that fact alone is not enough to lead you to conclude that a tort system has to be changed, because what you have to do is compare it to an alternative system that you are contemplating instituting.

So the absolute numbers that we're looking at are not meaningful in and of themselves, but they have to be compared.

And the last thing I'd like to say is that you can think of how you might make that comparison in the following way:

Let's say the system we have now is an optimal system in the sense that it's sending exactly the correct incentives to people who produce products, and say doctors who are practicing out there.

If that were the case, then the allocative cost of the system would be zero; there would be no allocative costs. However, you might still want to change the system if the administrative costs were large enough.

Now if you take the $38 billion figure that I had and you assume that you can think of another system that would save 20 percent in terms of costs in 1990, then you're saving $7.6 billion a year in the administration of the system.

Now the question is, What is this new system that you're thinking of going to look like? One of the problems might be that it has higher allocative costs; namely, it's sending out even worse incentives than the current system. The point you have to think about when you're trying to compare policies or systems is you have to start to trade off the administrative costs of the system against the allocative costs of the system, and that would basically be how you would make your policy considerations.

Thank you.

[The prepared statement of Mr. Schotter, together with attachments, follows:]

PREPARED STATEMENT OF ANDREW SCHOTTER

The Cost Of The Tort System

Testimony Before the Subcommittee on Trade,
Productivity, and Economic Growth

Washington D.C.
July 29, 1986

Andrew Schotter
Associate Professor of Economics
New York University
Co-Director, C.V. Starr Center for
Applied Economics,
New York University

Introduction

The following is a summary of the results of a study I completed with my colleagues at the C.V. Starr Center for Applied Economics at New York University which attempts to estimate the administrative costs of the current system of tort liability we have in the United States today. Such costs must be distinguished at the outset from what you might call the allocative or incentive costs of the system. By allocative costs we mean the costs society bears because its resources are being misallocated. One obvious example is the medical profession. As jury awards in malpractice cases increase the premiums that doctors pay will also increase. The extent that these premium increases do not reflect increases in the riskiness of medical procedures but rather the misplaced judgements of jurors, is the extent to which the system is sending the wrong price signals to doctors through their insurance premiums. Only when premiums reflect the expected damage of a medical practice can doctors correctly weigh the benefits and costs of performing medical procedures. When premiums increase for the wrong reasons the behavior of doctors is distorted. This leads them to over-prescribe diagnostic tests and in some instances to change areas of specialization in order to avoid the risk of being sued and having their premiums increased. As a result of these behavioral changes we get a misallocation of doctors across fields of specialization and a misallocation of diagnostic equipment and treatment accross patients. These misallocations are costly and, to my knowledge, have never been measured[1]. These costs can also be called the incentive costs of the system since they measure the extent to which the tort system, through its influence on insurance premiums, is not providing the correct incentives for, in this case, doctors to allocate their time and efforts optimally.

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[1] This is not surprising since to measure these costs would take a monumental effort involving data that, to my knowledge, does not as yet exist. From a societal point of view, however, these costs must be measured or at least estimated before a rational policy on this issue can be set.

The subject of my study, however,is another extremely significant cost of the tort system which is less frequently discussed: it's administrative cost. This consists of the bureaucratic costs that must be met simply to get compensation for people who are damaged as a result of the negligent actions of others. The interesting aspect of our tort liability system is that its a system of conflict resolution that relies heavily (at least in terms of costs) on litigation (or the threat of litigation) to get people compensated. This does not mean that many cases actually involve litigation. In fact, only about 1% of all claims that are filed end up in trial. The cost of that litigation that does take place, however, represents over 95% of the administrative costs of the system. Hence, at least in terms of costs, the system is litigation- driven.

Estimation Techniques

To estimate the administrative costs of the system we had to estimate the costs incurred by its main participants, namely

1)The costs of insurance companies in handling and litigating claims,

2)The cost of plaintiff lawyers,

3)The governmental costs of administering these cases including the costs of judges,baliffs, stenographers, and the implicit rental of court rooms,

4) The foregone income of jurors,

5) The cost of expert witnesses,

6) The time lost by the litigants themselves.

We are not including the cost of settlements or awards as a cost of the system because from a societal point of view these are merely redistributions of income or transfers from one party to another and do not impose any burden on society in and of themselves. Although, as stated above, the fear of these awards may lead the agents in the economy to alter their behavior incorrectly, and the effect of this altered behavior may constitute a social cost. Its magnitude will have nothing to do with the total amount of money transferred from defendants or insurance companies to plaintiffs, however.

Accurately estimating the adminstrative cost of the tort system is not a particularly easy task since the data in this field is suprisingly hard to come by and not particularly reliable. For instance, state courts do not keep records of the number of cases they handle by type of case and so it is hard to accurately estimate litigation costs. Faced with this problem we felt that the only intellectually honest way to proceed was not to make one estimate of the administrative cost, but rather to use a variety of methods to make a number of estimates and then to compare our estimates and check for consistency. In doing this we were forced to make a number of assumptions about the data and the behavior of the participants in the system. These assumptions are all listed in our study. In addition, we performed what is called a sensitivity analysis on our calculations by independently changing each of our assumptions (holding all others constant) to see how sensitive our results were to these assumptions. The result of this methodology is four separate calculations of the costs of the tort system, each of which was calculated four different ways depending on how we estimated the total number of court cases filed in a given year. In total, then, we performed 16 different estimates of the cost of the tort system along with a number of subsidiary calculations made to demonstrate the robustness (or sensitivity) of our calculations to the assumptions underlying them. All calculations were made for each year between 1979 and 1984, inclusive,and presented in nominal dollars.

Probably the best way to characterize our calculations is to point out that two of them were performed using insurance industry data collected by the A.M. Best Co.and two relied on court case-load statistics. A.M. Best data records the cost of domestic insurance companies involved in settling and litigating claims made against their clients. In these calculations (Methods 1 and 2), we merely estimated the costs of insurances companies (imputing a value for foreign reinsureres and self-insured enterprises) and added to it a cost estimate for the other actors in the system (i.e.,the plaintiffs, the courts, the jurors etc.).In each of these methods we estimated the number of tort cases filed using two different methods (Methods A and B) and then within each of these methods we drew another distinction depending upon whether we were counting just tort cases filed in courts of general jurisdiction (Gen.Jur.) or both general and limited jurisdiction (Lim.Jur.). Hence for each method we made four calculations. Methods 3 and 4 estimated the costs of the system more directly by estimating the number of tort cases filed and then costing these cases by estimating the average cost of a tort case. These calculations were again made four different ways constituting in total our 16 calculations.

Results

Our calculations for 1984 are presented in Table 1 below:

Table 1

Costs of the Tort System (1984)

(In Billions)

Method	Gen. Jur. Cases Using Method A	Gen. and Lim. Jur. Cases Using Method A	Gen.Jur.Cases Using Method B	Gen.and Lim.Jur Cases Using Method B
Method 1	$13.8	$14.0	$14.3	$14.2
Method 2	$17.0	$17.1	$17.5	$17.5
Method 3	$ 9.0	$10.8	$22.1	$23.16
Method 4	$10.5	$12.7	$25.0	$27.0

Our results, in summary, were that in four of our estimates the cost of the tort system was estimated to be in the range of $10 to $13 Billion, in eight of our estimates to be in the $14 to $20 Billion range, and in four others to be in the $22 to $27 Billion range. The mean of our estimates was

$16.5 Billion while the median was $14 Billion. To put these costs in perspective, if we use the mean as our benchmark and allow it to grow at a compounded rate of 8% (historically what we find this growth rate to be), then by 1990 we can expect to be spending $25 Billion a year (in 1984 dollars) simply to administer the tort system. If we take our highest cost figure of $27 Billion in 1984 and allow it to grow at the conservative growth rate of only 6%, then we can expect the annual administrative cost of the tort system to reach $38 Billion per year by 1990. Furthermore,using our $27 Billion estimate and an assumed growth rate of 6%, if we add up the yearly costs of the tort system over the six year period between 1984 and 1990, then the United States will be spending approximately $199 Billion simply to resolve disputes arising from third party negligence. That is a lot of money.

To show how these costs have risen over the past six years,I have included the following figures from our report:

Figure 3.1

Administrative Cost of the Tort System:
Method 1 Estimate
General Jurisdiction State Plus U.S.
District Cases Only Estimated Using
Method A
(in billions)

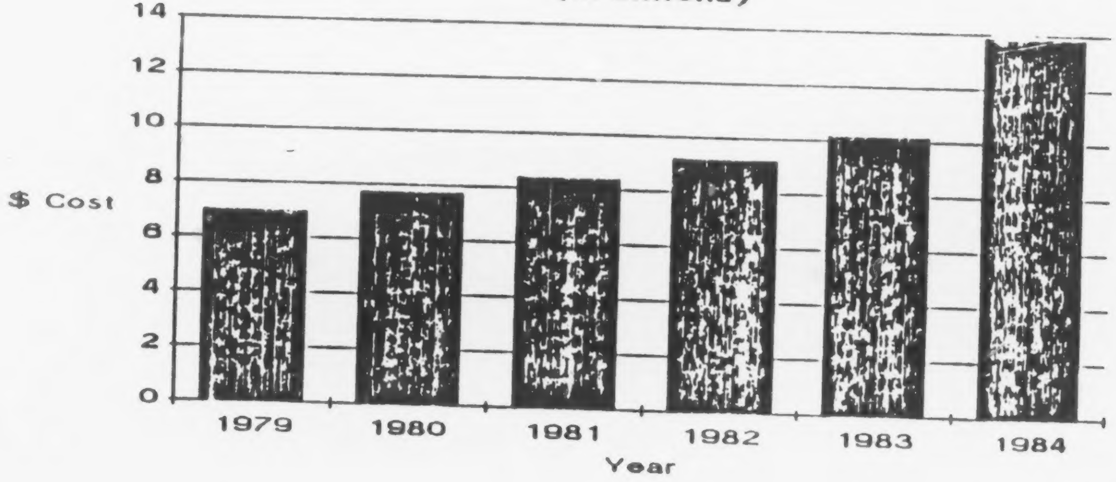

Figure 3.2

Administrative Cost of the Tort System:
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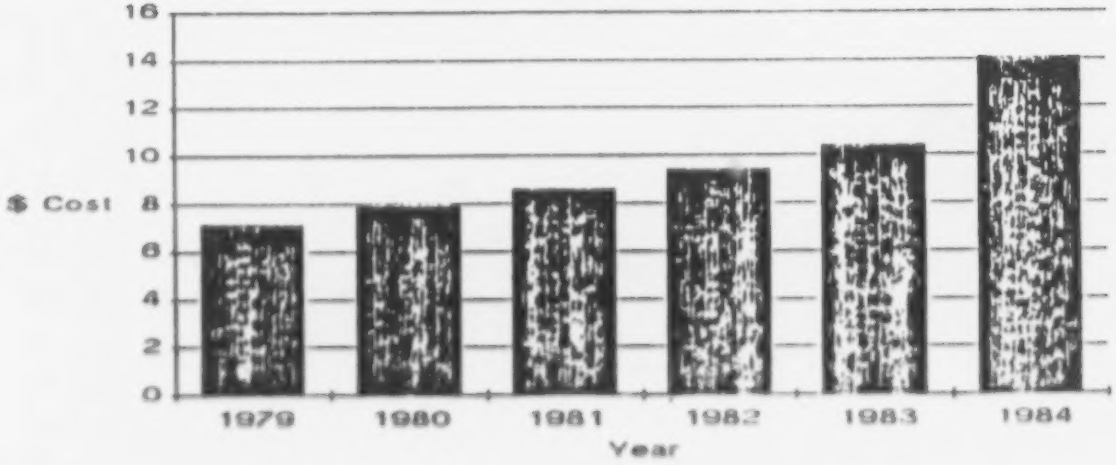

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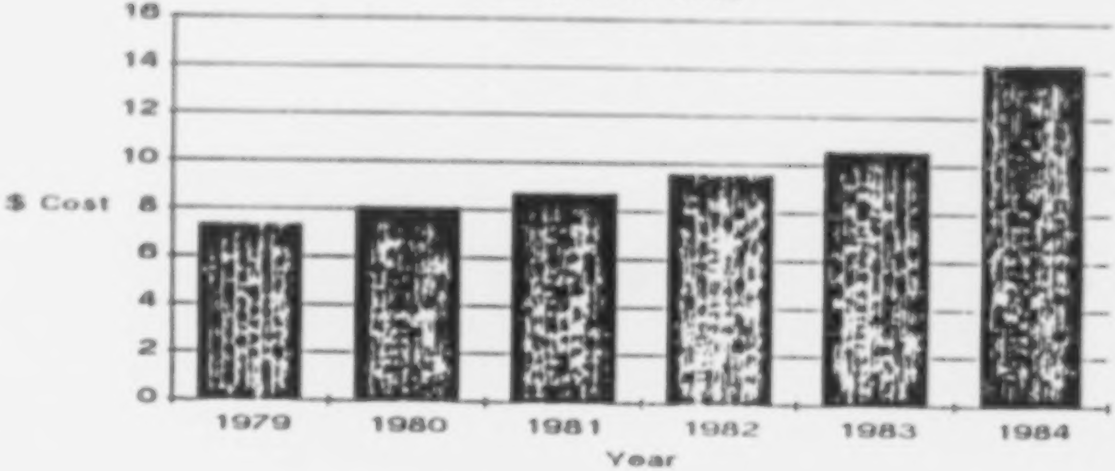

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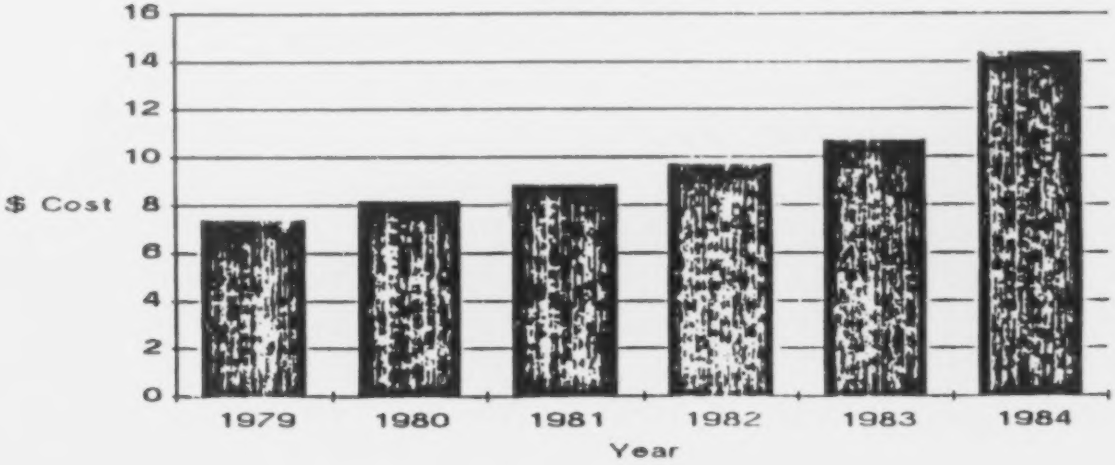

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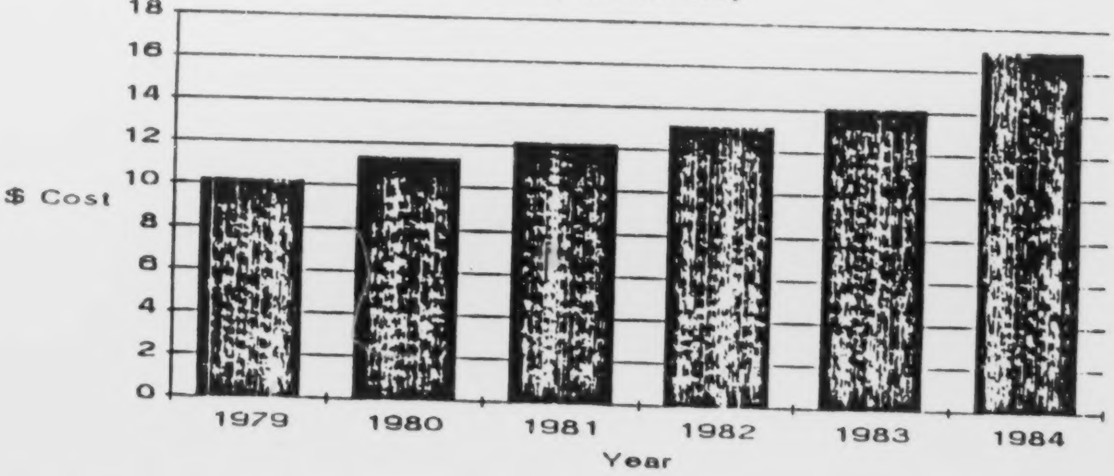

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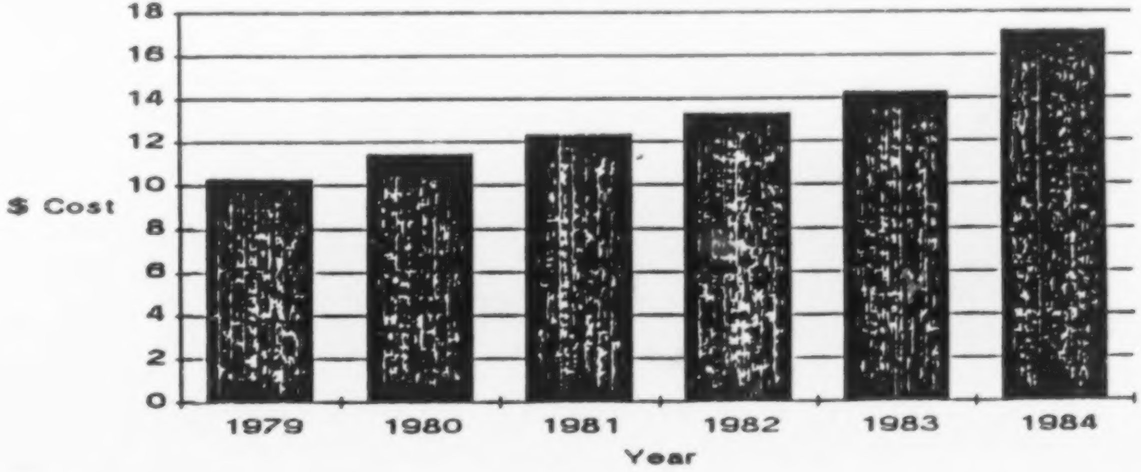

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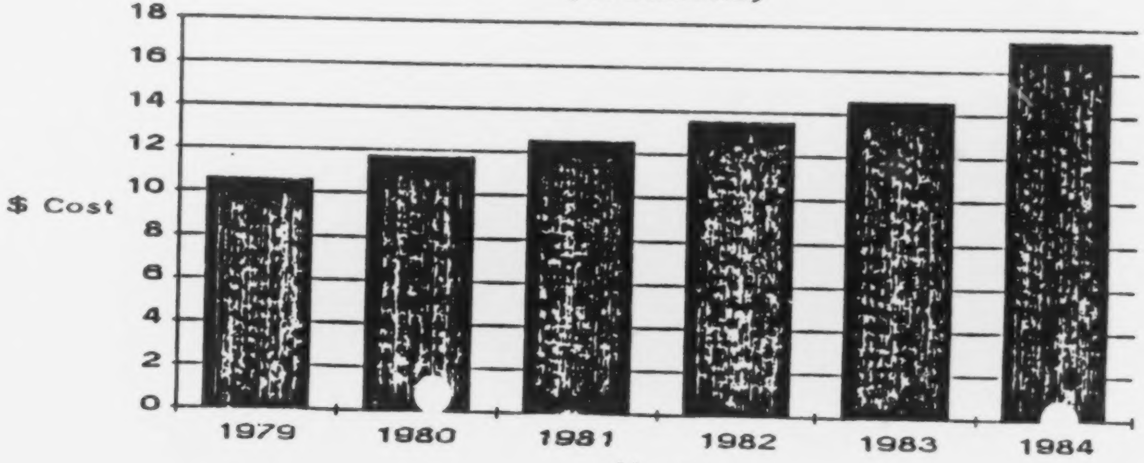

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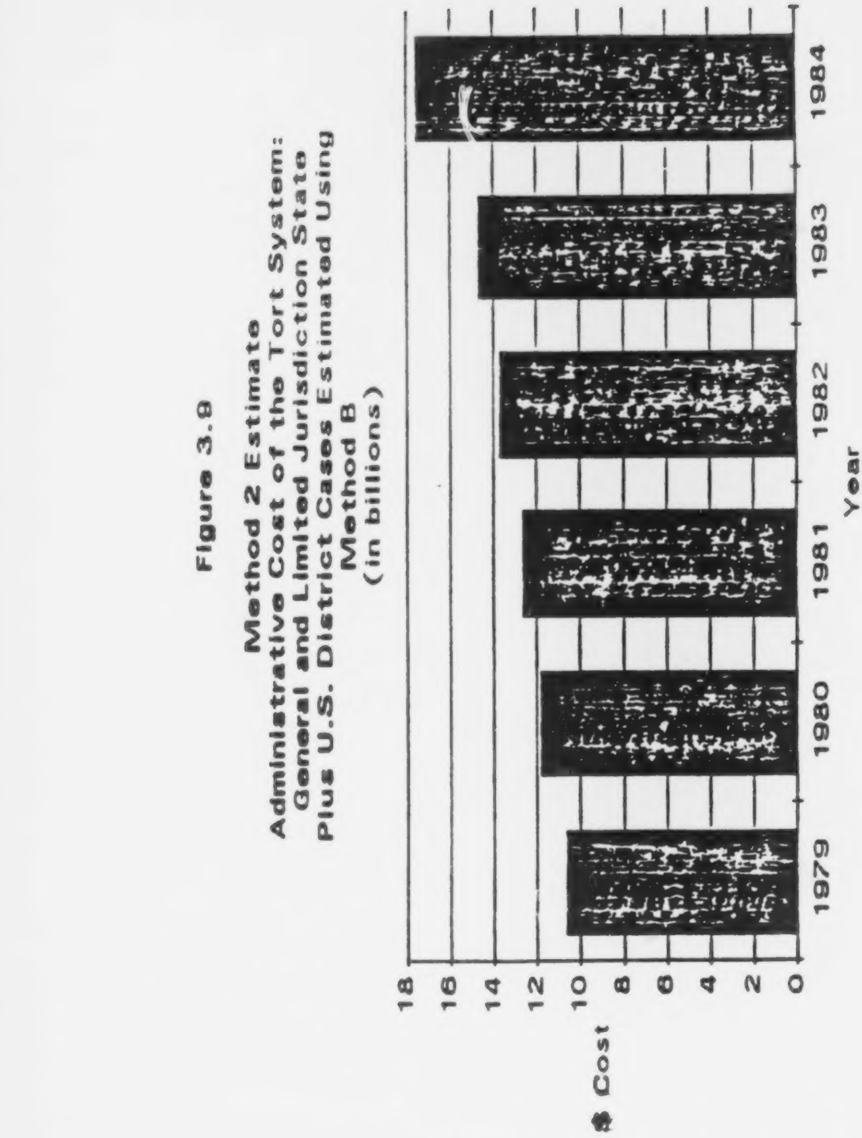

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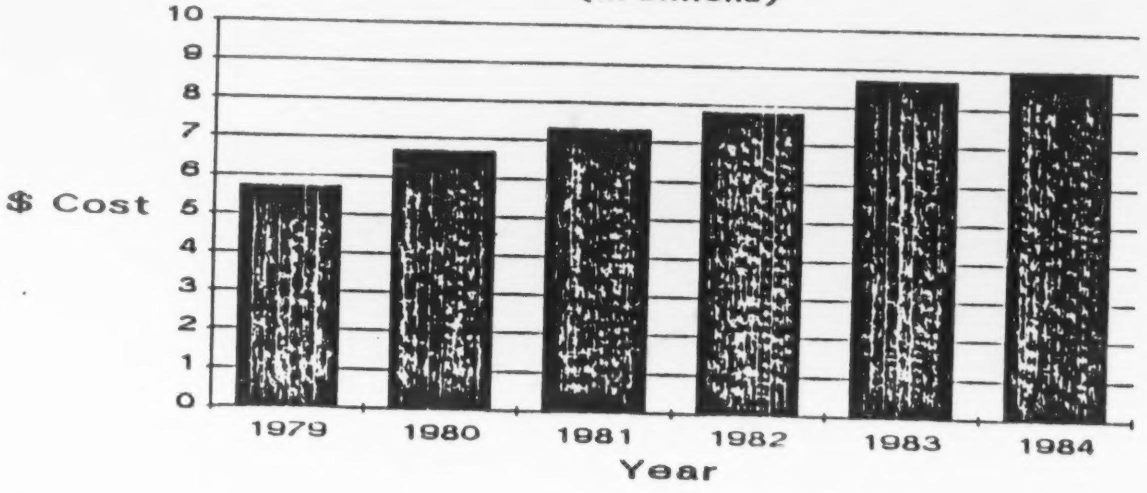

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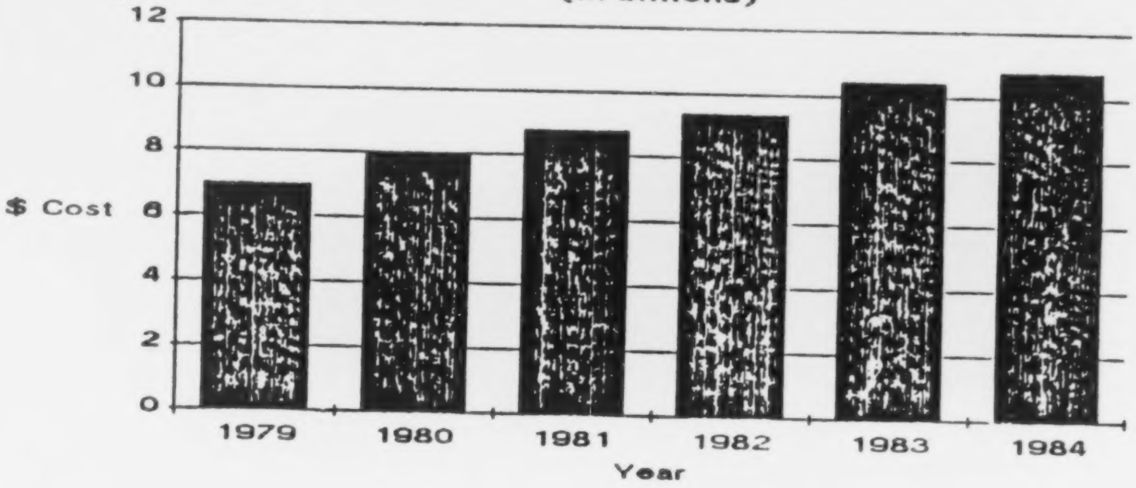

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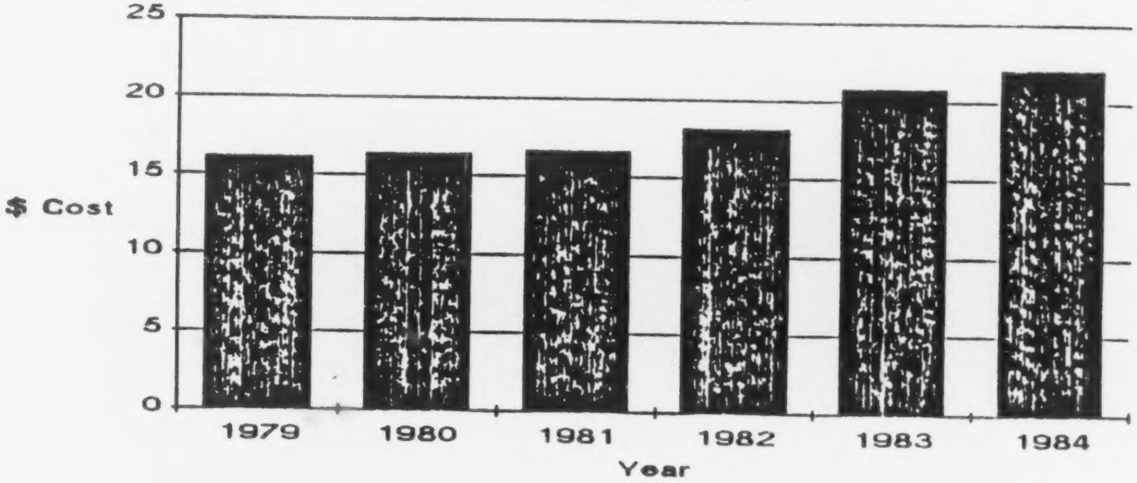

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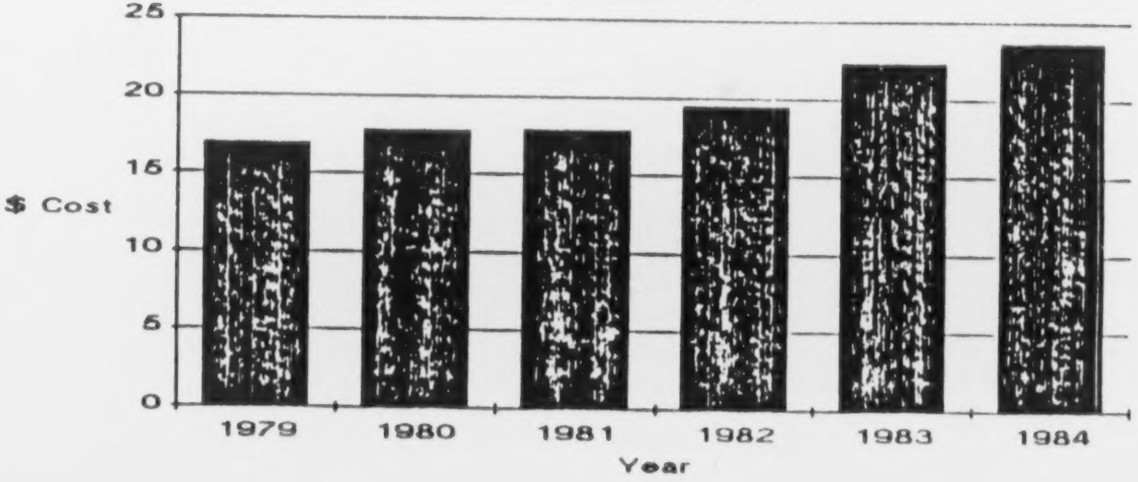

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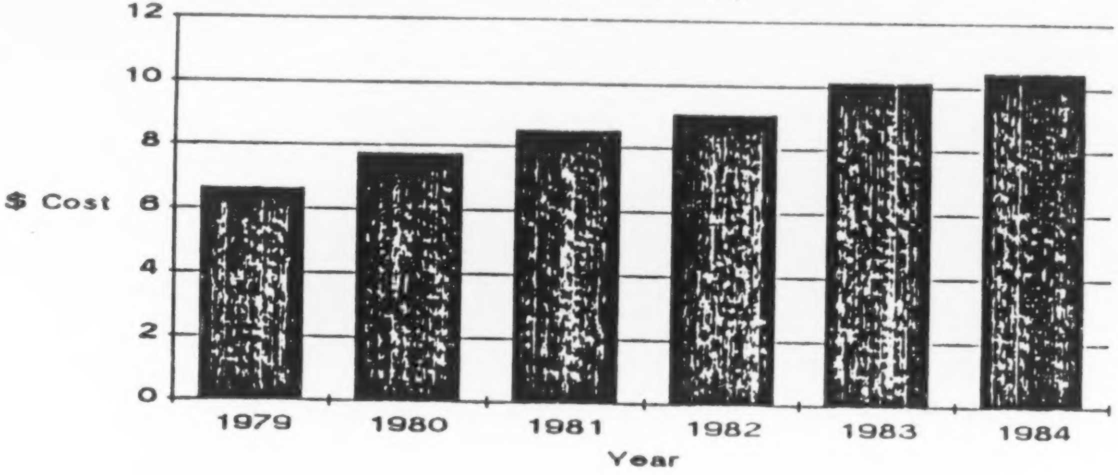

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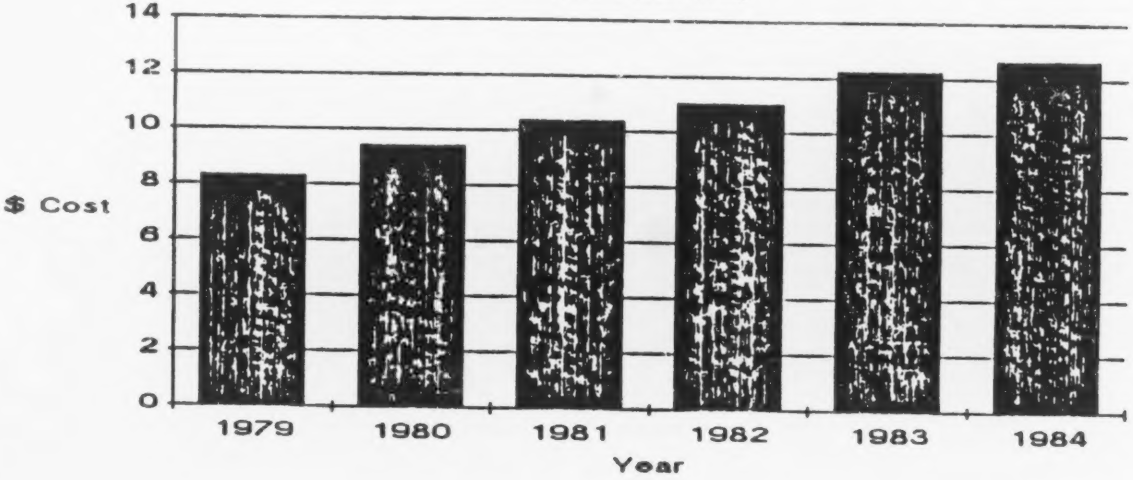

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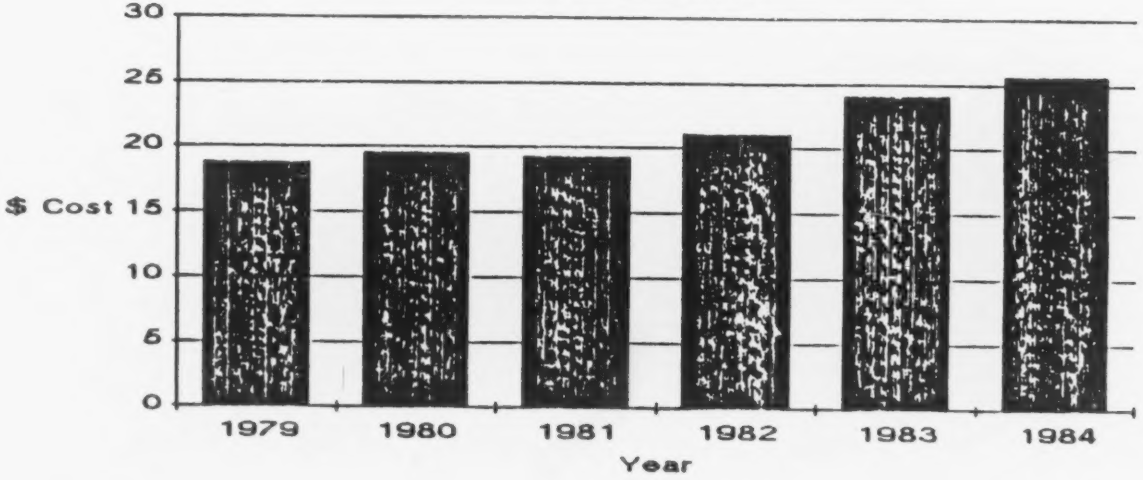

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Method 4 Estimate
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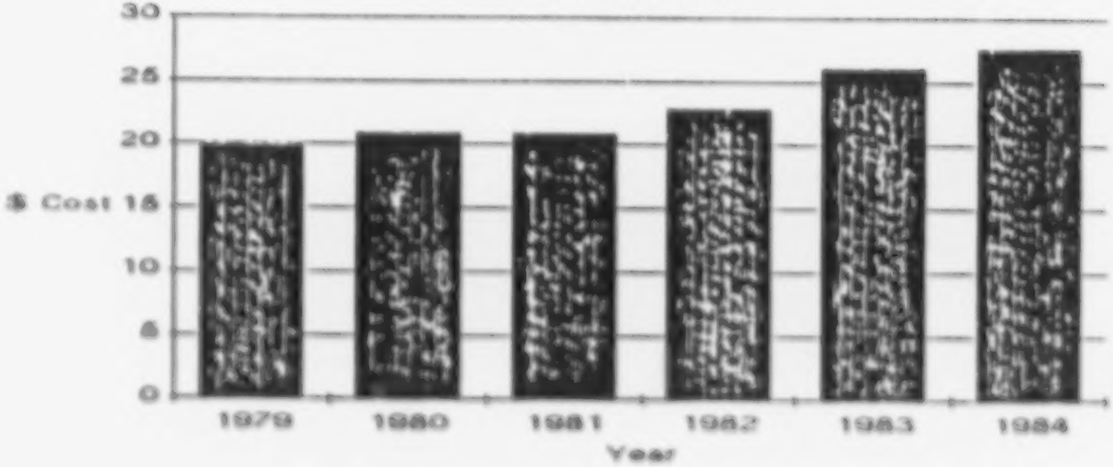

Our Method 1 estimates of the administrative cost of the tort system are presented in figures 3.1-3.4 . Each figure is calculated under a different assumption concerning the number of state court cases filed. As can be seen from the figures, our estimates of the total adminstrative costs of the tort system grows from approximately $7 Billion in 1979 to approximately $14 Billion in 1984 under all four Method 1 calculations. The growth is particularly rapid between 1983 and 1984, where it is 35%. In short, these costs almost doubled during the five years in question growing at average rates of 14.8%, 14.8%, 14.5%, and 14.5% respectively. If this rate of growth continues, the tort system can be expected to cost us $28 Billion a year by 1989 and will cost us $105 Billion over the next five years.

It is important to note that the rapid growth between 1983 and 1984 is a result of the way in which our cost data is collected. In the A.M. Best Schedule P data which formed the basis upon which our Method 1 calculations were made, insurance companies are asked to estimate their expected costs of settling claims which are made today but which will be settled in the future. It appears from the data that it is the amount of money that insurance companies have set aside for settling these cases which rose dramatically between 1983 and 1984. It is here that the the rapid increase in jury awards may have had a chilling effect on the behavior and expectations of the insurance industry since they obviously decided that more money needed to be set aside to adjust and settle claims.

Our Method 2 estimates are related to our Method 1 estimate in an obvious way-- they differ by only a constant in each year. Figure 3.6-3.9 portray these estimates. Here again the various estimates do not differ greatly from one another. As a general rule the administrative costs of the tort system start at approximately $10 Billion in 1979 and rise to approximately $17 Billion in 1984. The average growth rate was 10.3%.

The estimates of the total administrative cost of the tort system are both the highest and the lowest using our related Methods 3 and 4. This is true because these methods are extremely sensistive to our method of calculating the total number of court cases filed in state and federal courts, as well as the legal billing rates we used and our assumption about average hourly legal input into tort cases.Figures 3.11-3.14 present our calculations. Here we see that while some estimates are higher than those presented by Methods 1 and 2, some are clearly smaller. For instance, 1984 administrative costs range from a low of $9.05 Billion using Method A for calculating court cases filed and including only general jurisdiction filings, to a high of $23.7 Billion using Method B and including general and limited jurisdiction state courts. The reason for this difference is the fact that the number of court cases filed using Method B is two to three times the number of court cases estimated using Method A. It is our belief that Method B is probably the better method since it implies that approximatelty 19% of all civil cases filed are tort cases, while Method A implies a percentage of only about 6%--clearly too small a percentage.[2]The rate of growth of the administrative costs is less than that under our previous methods, as is clear from figure 3.1-3.4 as compared to figures 3.11-3.14. This is true mostly because cases filed did not grow as quickly as the costs of settling and litigating claims over the period. We estimate that if rates of growth continue to rise as depicted here these cost will equal between $13.87 and $30.83 per year by 1990 and will cost us between $59 and $134 Billion over the next five years.

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[2] A cross check of this method with one implied by J. Lieberman("The Public Processing of America's Disputes : The Capacities and Capabilities of Our Courts and Other Formal Public Dispute Resolution Institutions", paper presented at the National Conference on Lawyer's Changing Role in Resolving Disputes, Harvard Law School, October 1982) also confirms our suspicions that Method B is the proper way to proceed to estimate the number of court cases filed.

Method 4 estimates that total adminstrative costs of the tort system by using our Method 3 estimate and adding to it an imputed non-legal fee cost (e.g. expert witness costs, litigant time costs, out of pocket expenses), and the legal costs of claims for which lawyers are employed but for which no court filing occurs. Consequently, this method yields higher estimates. Figures 3.13-3.16 present our results. As can be seen, the estimates are quite varied, ranging from $10.5 to $27.7 Billion in 1984. The addition of the legal costs of plaintiffs for cases in which a court filing never occurs is substantial--as much as $3 Billion--and helps explain why our estimates using this method are so much bigger than our Method 1 and 2 estimates which use A.M. Best data.

Policy Implications

The question that now arises is how can we determine whether these costs are too large. Obviously, when contemplating a switch, we must weigh the costs involved in leaving this system with the benefits to be achieved under a new system. To help us think this through, consider the following hypothetical exercise. Assume that the present tort system is actually an optimal system in the sense of providing exactly the right set of incentives for people to avoid accidents. In such a tort system allocative costs would be zero. Despite this fact, it still may be advisable to to alter the system and cut down on the administrative cost if the saving were significant enough. For instance, taking our highest estimate in 1990 of $38 Billion we see that if an alternative tort system could cut costs by 20%, we would be saving $7.6 Billion, a year on administrative costs. Allocative or incentive costs would increase since we assumed these costs were zero for the current system. However, if the increased allocative costs were not greater than this $7.6 Billion, a change would be beneficial. In short, we would have to trade off an increase in allocative costs against a reduction in administrative costs, and the one which is greater would determine our decision. This assumes that the current system is optimal. If, as I suspect, the system is currently not optimal because it provides incentives for economic agents to be overly cautious, then a move to a new way of resolving disputes (even one that makes agents less cautious) might be unambiguously beneficial.

Conclusions

To conclude, let me say that more work needs to be done before we can intelligently decide whether or not a change in the current tort system is called for. We need at least a one-industry analysis which estimates both the alloctive and administrative costs of the tort system just to be able to understand the magnitudes involved. We need to know what types of incentives are being created by the current system, how these incentives are distorting behavior, and how much this distorted behavior is costing us. The American Medical Association has estimated that the allocative costs of the tort system for the medical profession alone is $40 Billion per year. Even if this figure were off by a factor of ten so that the true cost were only $4 Billion, it would still be significant, especially when we recognize the fact that this is only one of many such professions (or industries). Even on the basis of administrative costs, a change in the system looks advisable. Society must consider what it thinks it is getting by spending between $10 and $27 Billion a year on administering the current tort system and must consider what it could consume with those resources. With the magnitudes listed in Table 1, it would seem to me that we might want to search for other less costly methods of dispute resolution. I hope my comments today are of some help to you in your deliberations. I append my study for your consideration.

NYU Press Release

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For Immediate Release

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CIVIL LIABILITY SYSTEM COULD COST $38 BILLION A YEAR BY 1990, STUDY SAYS

NEW YORK, April 23 -- By 1990, as much as $38 billion could be spent each year in the United States to resolve disputes arising from negligence or accidents, according to projections in a study released today.

The study, funded by American International Group, Inc., a worldwide insurance organization, and conducted by researchers at New York University's C.V. Starr Center for Applied Economics, determined that between $15 billion and $20 billion is currently being spent each year to adjust and litigate claims made by injured parties.

The study was conducted in response to increasing public concern about the explosion in civil litigation and its effect on the cost and availability of liability insurance.

Using industry-wide data from 1979 to 1984, the AIG-sponsored study found that the cost of the system of dispute resolution rose dramatically -- 35 percent -- from 1983 to 1984 compared with an average annual increase of 9.9 percent during the previous four years. The rate of increase during this period formed the basis for the study's projected cost of the system in 1990.

The researchers, NYU economists Andrew Schotter and Janusz Ordover, said that such administrative costs were "considerable" when compared with total premiums earned by domestic insurers in 1984. The study indicated that between 19.7 and 26 percent of all premiums earned in 1984 were spent by plaintiffs and defendants to resolve disputes arising from negligence or accidents. In addition, the researchers determined that for every dollar paid in awards and settlements, between 25 cents and 34 cents is spent to administer the system of dispute resolution.

The researchers defined administrative costs as the sum of fees paid to attorneys and expert witnesses; court costs, e.g., judges, bailiffs, stenographers; income foregone by jurors, witnesses and litigants while away from their jobs; and expenses incurred in the adjustment and processing of insurance claims.

In their 106-page report, the researchers said they "made no attempt to estimate the more subtle and sizable 'economic' or incentive costs of the system."

An example of an incentive cost, the study said, is the adverse incentive for doctors to over-prescribe diagnostic tests and procedures to protect themselves in the event of a lawsuit.

"Such misguided incentives," the report said, "lead to an improper allocation of medical resources, which is extremely costly to society." An American Medical Association study, the report said, estimated this cost to be $40 billion per year.

The researchers noted that since they ignored such costs, their findings were "ultimately underestimates of the full social cost of the ... system."

The results of the study do not dictate a change to a particular system of dispute resolution, the researchers said. "However, what our estimates do say is that there is certainly reason to look for alternatives because we are spending so much simply to administer the present system. A less administratively expensive system, even if it provided weaker incentives for accident avoidance, might still be beneficial."

American International Group's member companies write property, casualty, marine, life and financial guarantee insurance in more than 130 countries.

The C.V. Starr Center for Applied Economics is a research institution aimed at bridging the gap between academic research and real-world decision making. Created in 1976, the Center sponsors economic research, conferences, seminars, public lectures and a popular Economic Policy Luncheon series.

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ECONOMIC POLICY PAPERS

THE COST OF THE TORT SYSTEM

by

Andrew Schotter
and
Janusz Ordover

PP-42 March 1986

C. V. STARR CENTER FOR APPLIED ECONOMICS

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The Cost of the Tort System

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March 1986

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We would like to sincerely thank Ken Rogoza and Elizabeth Rosenthal for their assistance in this project. We would also like to thank the C.V. Starr Center for the technical and staff assistance they furnished us, and A.I.G. Inc. for financial support. All opinions are soley those of the authors.

Summary

In this report we estimate the administrative costs of the tort system using four different methods and four different assumptions within each method. Two of the methods rely heavily upon the allocated and unallocated loss adjustment expense data furnished in Schedule P of A.M. Best's Aggregates and Averages, while the other two rely heavily upon court case load statistics to estimate the number of tort cases filed and then estimates the costs involved in resolving these cases. To a large extent our estimates were remarkably consistent. For instance, in 1984 eleven of our 16 estimates were in the $10 Billion to $17 Billion range, four were between $22 and $27 Billion, and one was $9.05 Billion.

If one considers the true cost to lie somewhere in the middle of this range (i.e. between $15 and $20 Billion), then such costs must be considered significant when one recalls that total premiums earned in 1984 by domestic non-captive insurance companies were only $76 Billion and that total losses paid and unpaid were only $58 Billion. In short, between 19.7% and 26% of all premiums earned were spent by plaintiff's and defendants to resolve disputes arising from negligence.

One alarming fact that arises from these estimates is that the rate of increase of this administrative cost figure has risen suddenly since 1983 in eight of our estimates (our Method 1 and 2 estimates), rising from an average of 9.9% in the five previous years to 35% in 1984. In our other two estimation techniques, this rate of growth was more erratic, averaging about 8.7% but fluctuating widely. These increases portend trouble ahead if they are not checked. If current rates of growth continue, we can expect that by 1990 we will be spending between $31 and $38 Billion per year simply administering the tort system.

The magnitude of the estimates just mentioned, in and of themselves, do not lead to any particular policy prescription. However, it must be clear from their size that the time is right to investigate possible reforms in the tort system since an administratively less costly system, even if it decreased the incentives people have to take care, might, on balance, be beneficial for society. We hope our calculations are a useful input into the debate surrounding this issue.

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The Cost of the Tort System

Section 1:

The enclosed report presents a set of calculations made to estimate the administrative cost of the system of third-party liability due to accident employed in the United States today. By administrative costs we mean all of those costs which are incurred in the process of resolving disputes arising through or because of tortious conduct.[1] No attempt is made to estimate the more subtle and sizable "economic" costs of the tort system. In addition, our estimates exclude any transfers, i.e. settlements or awards inherent in the system, since although such awards may indeed have a chilling effect on future behavior and prices, they alone are merely redistributive and present no direct social or administrative cost. All calculations made employ either currently existing data or the results of other published studies and were done for the period 1979 to 1984. No large scale attempt was made to generate a new data base. However, we do make use of some previously unpublished data on the costs of settling tort disputes collected by the Civil Litigation Research Project.[2]

1.1: An Outline of the Study:

When one first attempts to make the kind of calculation we attempt here, one is struck by the paucity of reliable data available. For instance, published statistics taken from different sources often differ by a factor of two or three and there are many instances in which the same study contains contradictory information. In many circumstances, data is generated by extrapolation methods which, while possibly necessary, are hard to justify. This is not said to denigrate the quality of research done by our predecessors, but rather to make the reader aware of the overwhelming difficulties faced when one tries to find reliable data in this area. Given this problem, we have attempted to make our calculations using four different methods. Within each method, we make our calculations under four different assumptions concerning the total number of tort cases filed in state and federal courts in a given year. As a result, we present 16 separate estimates of the administrative cost of the tort system. The majority of these estimates put the cost between $13 and $22 billion in 1984. We will leave it to the reader to decide for himself or herself which method is to be preferred. To help in your deliberations we present a list of all assumptions made in each case and then vary them accordingly to give a sense of how crucial they are. This sensitivity analysis demonstrates that our calculations are fairly "robust", i.e., a change in the assumptions does not change the value of the estimates greatly.

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[1] In our estimates we include the insurance industry cost of administering the system of worker's compensation since, although not a third party liability system, it is a part of our current tort system and does consume a considerable amount of resources. In section 4 we recalculate our estimates excluding losses associated with worker's compensation.

[2] We would like to thank Herbert Kritzer for his assistance in making this data available to us. The Civil Litigation Research Project was commissioned by the Federal Justice Research Program of the United States Department of Justice. The data was generated by a sample of over 1600 civil cases, from which over 1300 lawyers were interviewed. For further information about this project, see Civil Litigation Research Project: Final Report, Parts A and B, University of Wisconsin Law School, Madison Wisconsin, 1983. See Appendix A.8 for a presentation of this data.

We proceed as follows. In Section 2 we outline the four methods used to construct our estimates. In Section 3, the actual results of our calculations are presented and discussed, as is the sensitivity of our estimates to the underlying assumptions. In Section 4, using the example of no-fault insurance, we discuss how the type of calculations we present can be used to evaluate the costs and benefits of alternative liability systems. In Section 5 we present our conclusions. Finally, a set of technical appendices are attached which outline how the various calculations were made.

Section 2: Calculation Methods

2.1: A Note on Administrative Costs:

In this report we interpret the term "administrative costs" to mean the sum of all lawyer costs incurred, insurance company non-legal loss adjustment expenses, governmental court costs expended, jury income foregone, and expert witness and litigant time occupied in pursuing our current system of adjudicatory dispute resolution. Hence, the methods we use differ in the techniques to estimate the various components listed above. Administrative costs can be distinguished from the incentive or economic costs of the tort system by noting that the present system can distort the incentives that individuals have in a way that leads to decisions which are not optimal from a social point of view. For instance, it is often claimed that the current system of medical malpractice liability encourages excessive caution on the part of practicing physicians. More concretely, the current system creates adverse incentives for doctors to overprescribe diagnostic tests and procedures for their patients in an effort to protect themselves in the event of a lawsuit. Such misguided incentives lead to an improper allocation of medical resources which is extremely costly to society. One study by the American Medical Association[3] estimates this cost to be $40 billion per year. Even a cost of one-tenth this amount would be cause for concern. Other examples of this phenomenon in other areas of the tort field are easy to find, and their costs are equally staggering. However, all of these incentive costs will be ignored in this report. Hence, no matter what numbers we come up with, they are ultimately underestimates of the full social cost of the tort system.

[3] As cited in 1985-86 Property Casualty Fact Book, Insurance Information Institute, New York, NY 1985.

Finally, it must be noted that by constructing different, independent calculations, contradictions across methods may arise. These contradictions are again an artifact of the poor state of information in this area. As a result, our calculations must be considered as an exercise in following the consequences of the extant studies in this area to their logical conclusions.

2.2: Method 1: The Allocated Cost Method

Our first method of estimation involves the use of data gathered by the A.M. Best Company[4], which publishes aggregate data on the amount of "loss expense payments" incurred by non-captive insurance companies in the process of settling and defending the claims brought against them. Loss expense payment costs are defined as: "All payments for legal expenses, including attorney and witness fees and court costs; salaries and expenses of investigators; adjustors and field-men rentals; stationary, telephone and telegraph charges; postage; salaries and expenses of office employees; home office expenses and all other payments under or on account of such losses, whether the payments are allocated to specific claims or unallocated."[5] When these costs can be imputed directly to specific claims, they are termed "allocated costs." Hence, allocated costs exclude the imputation of fixed costs which are costs which must be met by an insurance company even if a particular claim had not been filed against it.

If one records the amount of allocated loss expenses both paid and reserved for loss expenses of yet unsettled claims in a given year, one obtains an estimate of the total amount of economic resources directly allocated by domestic non-captive property and the casualty insurance industry in the process of settling and defending tort liability claims. This amount underestimates the true industry-wide figure, however, since it excludes the allocated loss expenses of both captive insurance companies and self insured enterprises, such as the United States government, several state and municipal governments, and many large corporations like General Motors. It also excludes the loss adjustment expenses of foreign-based reinsurers whose reinsurance policy stipulates sharing of loss expenses.

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[4] All loss expense data referred to below comes from schedule P. of A.M. Best's Averages and Aggregates. 1985.

[5] A.M. Best Aggregates and Averages, (1985) p. 55.

To fill these gaps, we estimate and impute loss adjustment expenses (allocated or unallocated) to these other types of insurers. This was not an easy task. For alien reinsurers, according to the Department of Commerce's Bureau of Economic Analysis, approximately 2% of all premiums written by domestic insurance companies in 1980 were ceded to alien or foreign reinsurers.[6] Reinsurance contracts provide for a sharing of the allocated loss expenditures of their domestic clients, but the manner in which these costs are shared depends on the specific contract. For instance, some contracts stipulate that reinsurers are responsible for a predetermined fraction of all losses (including the loss expenses associated with them) from the first dollar paid, while others stipulate a threshhold beyond which the reinsurer is solely responsible for a certain amount of the losses and associated loss expenditure. The question raised is whether, since alien reinsurers are oeded 2% of the domestic liability premiums, it would be appropriate to assume that they pay on average 2% of the allocated loss expenditure costs? Arguments can be made to justify both a larger or a smaller percentage. However, in this report we will use this assumption.[7] Therefore, our estimate for the allocated loss expenditure of alien reinsurers is 2% of the total allocated loss expenditure of domestic non-captive insurance property and casualty companies as reported by A.M. Best in Schedule P. This procedure implicitly assumes that the incidence of reinsurance ceded abroad on the lines of insurance listed in Schedule P is equal to the incidence with which all insurance is ceded abroad. Consequently, this assumption probably leads to an underestimate since the schedule P lines are probably more heavily reinsured abroad than other types of insurance. Appendix A.7 presents these calculations.

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[6] The A.M. Best figures are stated net of foreign reinsurers reimbursements. See Appendix A.7 for details of this data. The estimates of the percentage of premiums ceded abroad comes from International Transactions Data, Department of Commerce, 1979-1984.

[7] Since only 2% of all premiums are ceded abroad, our final figures will not be very sensitive to this assumption.

Estimates of the allocated loss expenses incurred by captive insurance companies and self insurers[8] are extremely hard to locate. The only source of reliable data available on captive insurers and self insurance comes from a survey undertaken by Conning and Company.[9] From a survey of 800 risk managers, it was estimated that in 1980, 22% of the real commercial market was represented by risk retention programs. Here the term "real commercial market" means: "all costs or premiums associated with securing commercial business against risks, thus including self-insurance or captive costs."[10] Hence, the real commercial market is actually 22% larger than the traditional commercial market that was estimated by A.M. Best to be $48 Billion in 1979 for non-captive domestic insurers. Despite the considerable tax and cash flow advantages that result from self-insurance or from the formation of a captive, the great stimulus for their formation was the unavailability of insurance for these business or governmental entities. Hence, losses can be expected to be relatively larger for captives and self-insureds. In fact, it has been suggested that self-insurers may be expected to have larger legal expenses since, by handling their own defense, they are more likely to defend claims all the way to court rather than settling them.[11] In our analysis, we assume that there is no difference in the basic ratios of the business of non-captives and captive/self-insureds. By this we mean that we assume that such ratios as (premiums written)/(losses), (allocated loss expenses)/(losses), etc., do not differ significantly according to whether the company is a captive or a non-captive. Appendix A.6 presents the data generated by these assumptions. Finally, it is important to note that the Conning and Company estimate excludes all Federal, State and Municipal Government self-insurance and hence, represents a substantial *underestimate* of the total.

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[8] Self-insurance is a hard term to define since there is sometimes a fine line to be drawn between being self-insured or simply being insured with a large deductable.

[9] The Changing Property & Casualty Commercial Lines Markets, Conning and Company, Hartford, Conn., Dec. 1980.

[10] Conning and Company (1980), p.1.

By adding the allocated loss expense payments of domestic non-captive, alien reinsurers, captive and self-insureds, we approximate the total amount of resources expended by all insurance companies in the legal defense of claims made against them in any given year. However, this is only part of the story. In addition to these expenses, there are the legal expenses of the plaintiffs who bring these claims. No distinction between allocated and unallocated cost need be made here since all such costs must be considered allocated (they would not exist but for the particular lawsuit being brought). In essence, what we attempt to do is estimate plaintiff claim resolution costs in the economy. We do this as follows. A.M. Best data presents the costs of non-captive insurance companies acting as defendants in liability suits and settlements. As estimated by Grimm (1985), using A.M. Best data in 1984, practically 90% of these allocated loss expenditures are legal fees[12] (the remaining costs being those of medical exams (2.0%), expert witness (7.5%) and other expenses (.09%). Hence, if we make the assumption that plaintiffs' costs are strictly legal costs, and that the plaintiff in a suit employs a legal technology which is equally as costly as the defendant's (a claim that is asserted in medical malpractice cases),[13] we can estimate the plaintiff claim resolution costs by multiplying total allocated costs by .90.[14]

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[11] Conning and Company, p.195.

[12] Roy Grimm, *Crisis in Liability Insurance: A Time for Change*, Conning and Company, Nov. 1985, p.23.

An alternate justification for assuming that plaintiff legal fees should be as costly as those of the defense relies on a free market argument. If insurance defense lawyers were to earn more money than plaintiff lawyers, then, barring any non-pecuniary income factors, new entrants into the market would join defense firms faster than plaintiff firms. This would drive down legal defense fees and drive up plaintiff legal fees. The process would then continue until incomes (and ultimately billing rates or implicit billing rates if contingency fees are used) are equalized.

Finally, to legal costs of the insurance industry and plaintiffs, we must add the governmental cost involved in administering the court system required to handle these cases and the foregone earnings of jurors and litigants as well as expert witness costs for non-insurance company litigants. To estimate the court and jurors costs we rely on an Institute for Civil Justice study by James Kakalik (1982). Kakalik estimates the court expenditures for tort cases by estimating the number of judge minutes allocated to a typical tort case, and then costing these minutes by the average court minute cost (which includes judge costs, stenographer costs, juror costs, bailiff costs, etc.). In 1980, it was estimated that these costs averaged approximately $400 per case filed in state courts of general jurisdiction and $1740 per case filed in United States District Courts. This number is then multiplied by the estimated number of such cases nationwide to get an aggregate or total figure. The court costs used by Kakalik are extrapolations based on data from California, Florida, Washington and United States District Courts in 1982.

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[13] Danzon (1985), p.186.

[14] Since Workers Compensation is not a system which involves legal expenses for plaintiffs, these expenses are eliminated from our calculations. This implicitly assumes that there are no accident resolution costs incurred by injured parties in such cases. This is a conservative assumption, but data does not exist to estimate these costs.

It must be pointed out that the cost figure cited in the Kakalik study is almost certainly a significant underestimate for three reasons. First, Kakalik values juror time not at its opportunity cost (i.e. income forgone) but rather at the amount paid jurors, a much smaller figure on average. More importantly, the calculation is made by estimating the total number of tort cases filed per 100,000 population in 1976 from data gathered in nineteen states.[15] We then extrapolate from this nineteen state estimate by multiplying the United States population by the estimated average number of court cases filed per 100,000. This method assumes that the incidence of filing is constant throughout the population, so that the 19 state estimate calculated as described above is assumed to be relevant for the 32 states not in the sample. Using this method, Kakalik estimates that 661,000 state court tort cases were filed in 1980. Finally, Kakalik's data only includes cases filed in courts of general jurisdiction. However, we estimate that between 261,000 and 281,000 cases were filed in courts of limited jurisdiction in 1984. (See Appendix A.1 and A.2). This ommission thus substantially underestimates the total number of cases filed.

There are other methods that can be used to make estimates of the total number of cases filed in state and federal courts using the same data as Kakalik,[16] all of which lead to significantly higher numbers. (See

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[15] State Court Caseload statistics, National Center for State Courts, Williamsburg, VA. (See Appendix A.1 for full analysis).

[16] State Court Caseload Statistics, National Center for State Courts, Williamsburg, VA.

Appendices A.1, A.2 and A.3 for details). In this report, we employ two methods, which we label method A and method B. Method A is Kakalik's (1983) method. To duplicate his method, we estimate the average number of tort cases filed in general jurisdiction courts per 100,000 population in 1979 through 1984 for the approximately 20 states which report accurate data. Finding this figure, we then multiply it by the population of the United States to get a national number. Using this method, we estimate that the total number of state court cases filed in general jurisdiction courts in 1979 was 582,638. This number grew to 617,415 in 1984. Total state general plus limited jurisdiction cases grew from 842,638 in 1979 to 899,209 in 1984 (see Appendices A.1 and A.2 for details).

An alternative method (method B) is to calculate tort cases as a fraction of all civil cases filed in the state sample used above, taking an average across states (weighted by state populations), and then extrapolating under the assumption that this fraction is representative across all states. Total civil case estimates are generated by the National Center for State Courts[17] using a least squares regression statistical technique. In 1980, they were estimated to be 14,400,000, while in 1984 they were estimated to be 16,528,217. Using our technique, we estimate tort cases filed in general jurisdiction state trial courts to be approximately 10% of total civil cases filed over the period 1979-1984, and tort cases filed in limited jurisdiction courts to be about 3%. (Kakalik's method yields a percentage of 4.5% for general jurisdiction cases, which we consider to be far too low). Hence, our estimates of the total number of general jurisdiction state court cases filed runs from 1,449,200 in 1979 to 1,571,172 in 1984 while general plus limited jurisdiction cases filed run from 1,824,760 in 1979 to 1,832,475 in 1984.

[17] State Court Caseload Statistics, National Center for State Courts, Williamsburg, Va.

Total tort cases filed in U.S. District courts grew from 30,503 in 1979 to 38,734 in 1984. (See Appendix A.1 for details). There are advantages and disadvantages to each of the methods used to estimate the total number of tort cases filed. Hence, we make all of our calculations twice, each time using a different method.[18]

Since we employ two different methods to calculate the total number of tort cases filed in a given year and use two different assumptions about the type of state tort cases we will include (i.e. general jurisdiction or general plus limited jurisdiction), we generate four different estimates of the total cost of the tort system for each of our four methods employed. All together, we generate 16 separate estimates.

Finally, total jurors' costs are estimated in a straightforward manner. As stated above, from a social point of view, the cost to society of alloting citizens' time to tort juries is best calculated by estimating their foregone earnings during their service. This best reflects the value of goods and services lost and, hence, the social opportunity cost of the jury. Since jurors are paid, these payments must be counted since they are a social cost as well (despite the fact that they are a private benefit). Appendix A.5 outlines our method of calculating these costs. Since jury costs will vary with our estimates of the total number of filed cases that proceed to a jury trial, our jurors' cost estimate will vary with the method we use to estimate the total number of cases filed.

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[18] As a check on these two methods we employed a third method (method C in Appendix A.3) which uses Lieberman's (1982) estimate that, for every tort case filed in U.S. District Courts, there are between 70 and 100 filed at the State level. This leads to the estimated number of tort cases being equal to 2,103,713 in 1979 and rising to 2,750,114 in 1984. Clearly, these are our highest estimates by far and lead us to suspect that our method B is probably closer to the truth than method A.

Briefly, we estimate the total juror cost to society by estimating the total number of juror hours consumed by tort cases and then by costing these hours at an estimate of the mean earnings per hour foregone[19] of citizens of the United States. To estimate the number of juror hours consumed, we merely take our estimate of the total number of cases filed, and assume that 4% of these cases lead to a trial jury[20] lasting 3.5 days[21] and employing 6 jurors.[22]

The formula used to calculate our method 1 estimate is as follows:

Administrative Cost = Domestic Non-Captive Insurance Company Allocated loss expense payments
+ Captive Insurance Company Allocated Loss Expense Payments
+ Alien Reinsurers Allocated Loss Expense Payments
+ Plaintiff Claims Resolution Expense Payments
+ Court Costs
+ Juror Forgone Earnings

where: Plaintiff Claims Resolution Expense Payments = [total (non-captive, captive, self and alien reinsurers') insurance company allocated loss expense] x [.90] .

2.3: Method 2: Total Loss Expense Method

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[19] This estimate was made using data presented in the Economic Report of the President, pp. 244 and 256 (see Appendix A.5).

[20] This estimate is derived from data presented in table A.5.1 in Appendix A.5.

[21] See "Institutional Costs of Civil Disputes," Terence, Dunworth in Civil Litigation Research Project, Final Report, part B. (Trubek et. al. ed), University of Wisconsin Law School, 1985, pp. II-21, where it is estimated that a typical civil case that goes to jury trail lasts 5 days. Our 3.5 day assumption is conservative.

[22] Many states still use 12 person juries. Hence, our estimate is conservative.

A claim can be made that the method outlined above is an underestimate of the true administrative cost of the tort system because, if an alternate system were in place, much of the overhead required by the current system might be eliminated. Hence, many unallocated costs currently existing would not exist under a system less prone to litigation. To meet this criticism we recalculate method 1 using total loss adjustment expenses instead of simply allocated loss adjustment expenses. The formula used for method 2 is then:

Administrative Cost - Domestic Non-Captive Insurance Company Loss Expense Payments

+ Captive Insurance Company Loss Expense Payments

+ Alien Reinsurers' Loss Expense Payments

+ Plaintiff Claims Resolution Expense Payments

+ Juror Foregone Earnings

where: Plaintiff Claims Resolution Payments - [Total (Non-Captive, Captive and Self Insured, and Alien Reinsurers') x [.90][23] . Insurance Company Loss Expense]

2.4: Method 3: The Pure Legal Cost Method

Method 3 is probably our most simple and direct method. It merely involves taking the total number of tort cases filed in state courts of general jurisdiction (or general plus limited jurisdiction) and U.S. District Courts, multiplying this number by the mean number of legal hours involved in a typical tort case, as estimated by our unpublished data on tort litigation obtained from the Civil Litigation Research Project at 68 hours, (see Appendix A.8 for this data) and then multiplying this number by the mean hourly billing rate for lawyers in the United States as reported by a survey conducted by Altman and Weil (1985)[24]. Since billing rates differ for insurance defense

[23] If one thinks that our assumption that all unallocated costs might, in the long run, be allocable if the system were changed is too strong, we vary this assumption in section 3 below.

[24] This is an annual survey of a stratified sample of 388 law firms drawn from firms of sizes ranging from 2 to over 150, from cities with populations ranging from under 5,000 to over 1 million. Billing rates and average hours billed are collected separately for partners and associates by date admitted to the bar. Separate surveys are taken for lawyers engaged in insurance

work and plaintiff representation (we are imputing an hourly rate to plaintiff legal fees rather than using a contingency fee), we multiply the total number of legal hours for the defense and the plaintiff by a weighted average of these rates to obtain an estimate of the legal costs incurred by society in settling these disputes. To estimate the total legal cost of cases filed in courts of limited jurisdiction, we will start with the assumption (perhaps conservative) that cases filed in courts of limited jurisdiction involve fewer legal hours than cases filed in courts of general juridiction. This assumption may be overly conservative since cases filed in limited jurisdiction courts may not necessarily be less complex than cases filed elsewhere. However, in many states these courts include small claims courts and for that reason we felt it prudent to make our assumption. To operationalize this assumption, we assume that for cases filed in courts of limited jurisdiction,, instead of involving the mean number of legal hours reported in the Civil Litigation Research Project (68 hours), they only involve the median, 30 hours.

Since this method only involves legal costs and ignores all non-legal claims adjustment costs, we would expect it to generate a lower estimate of the administrative costs we are interested in estimating. However, this estimate is extremely sensitive to the assumptions we make about the total number of court cases filed since we multiply each such case by two separate legal fees. (In our other calculations it is only the court and jury costs that are affected by our assumptions about the total number of tort cases filed). Therefore, we might expect this figure to be larger than the figure we arrive at under Methods 1 and 2, at least for the calculations made using our higher estimates of the number of tort cases filed. The formula for this method is:

defense work and those that are not since billing rates are lower for insurance defense work. In our calculations, we use a weighted average of these rates--see Appendix A.9 for the calculation.

Administrative Cost = (Total Number of Tort Cases filed in U.S. District Courts and State Courts of General Jurisdiction and/or General plus Limited Jurisdiction)

x (Average Number of Legal Hours Consumed by Tort Cases)

x (Mean Legal Billing Rate)

x (2)[25]

+ Court Costs

+ Jurors Foregone Earnings.

2.5: Method 4: Full Legal Cost Method

One can criticize our Method 3 as presenting a severe underestimate since it only calculates the time lawyers spend on cases actually filed in state courts (of general and/or limited jurisdiction) and U.S. District Courts, and because it also excludes non-legal fee expenses. In many states, however, filing a case is one of the last things that gets done and there may actually be a large amount of legal time expended on a case before it reaches the point of filing. According to Miller and Sarat (1980-1981), in the field of torts, 116 out of every 857 tort claims filed proceeds to the point where lawyers are employed while only 38 of those 857 claims actually lead to a court filing. Thus, for every tort case filed, there are almost another two claims that involved the use of some lawyer time but which were resolved before a court filing. To estimate these costs we will again rely on the Civil Litigation Research Project (1983) and the unpublished data presented in Appendix A.8. What we want is to be able to attach a cost figure to the amount of legal time consumed in settling those cases which involve lawyers but which do not lead to a case being filed, in addition to those cases actually filed. We use the

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[25] Since there is at least one lawyer on each side of the litigation we must multiply the above figures by 2. Actually in many cases there are more than one lawyer on each side. Hence this assumption is conservative.

Civil Litigation Research Project data, presented in Appendix A.8, to do this. In that data, it is estimated that one half of all tort cases filed involve 30 or less hours of legal time. To estimate the legal hours consumed by claims which do not lead to a filing, we will assume that no such claim ever consumes more than the median number of hours (i.e., 30 hours). In fact, we assume that they employ the mean number of hours below the median (10.4 hours). Multiplying this figure by the total number of claims made which do not lead to a case filing, we obtain an estimate of the total number of legal hours consumed by all of those cases which employ lawyers but which ultimately do not get filed. We assume that only plaintiffs contact lawyers in these circumstances, while insurance companies employ adjusters to settle these claims. Defense litigation costs will be assumed not to be incurred in these claims -- a rather conservative assumption. The above estimates represent only legal expenses. Trubek, et.al. (1983) estimate that legal fee expenses are 99% of total litigation expenses. Hence, to estimate total litigation expenses, i.e. legal fees plus expert witness costs, litigant forgone earnings, out of pocket expenses, etc., we need to multiply our legal fee expense by 1.01 to get an accurate estimate of the full costs of resolution.

Hence, if we add the total cost of legal inputs into cases filed in U.S. District Courts, state courts of general or general and limited jurisdiction, and claims which were settled before filing, and then add court costs and jurors forgone earning, we arrive at our Method 4 formula:

Administrative Costs = Legal Costs of cases filed in U.S. District Courts
+ Legal Costs of Cases Filed in State Courts of General Jurisdiction or General plus Limited Jurisdiction
+ Legal Costs of Claims settled before filing
+ Court Costs

+ Non-Legal Monetary Costs (i.e. litigant time spent + Expert Witness, etc.)

+ Juror Income Foregone .

Section 3: The Estimates:

In this section, we present our estimates of the administrative cost of the tort system using the methods described in section 2. As stated before, for each method of calculation, we present four estimates, which differ according to the method used to estimate the number of tort cases filed and whether we include only general or both general and limited jurisdiction state court filings. After the results of each calculation are listed, we present a list of the assumptions used to generate it and then recalculate them by altering the more important assumptions to assess their impact on the calculations.

3.1: Method 1 Estimates:

Our Method 1 estimates of the administrative cost of the tort system are presented in tables 3.1-3.4 and the corresponding figures 3.1-3.4. Each table and its corresponding graph is calculated under a different assumption concerning the number of state court cases filed. As can be seen by tables and figures 3.1-3.4, our estimates of the total administrative cost of the tort system grow from approximately $7 billion in 1979 to approximately $14 billion by 1984 under all four Method 1 calculations. The growth is particularly rapid between 1983 and 1984, where the growth rate is 35%. In short, these costs almost double during these five years, growing at average rates of 14.8%, 14.8%, 14.5%, and 14.5% in the four calculations, respectively. This rate of growth is alarming because, if it continues, we can expect the tort system to cost us almost $28 billion a year by 1989 and will cost us $105 billion over the next five years. Our four estimates

TABLE 3.1

METHOD 1 ESTIMATE

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD A*
(in billions)

	1	2	3	4	5	6	7
YEAR	Non-Captive Insurance Company Allocated Loss Adjustment Expenses Paid and Unpaid[4]	Captive and Self Insureds Insurance Company Allocated Loss Adjustment Expenses Paid and Unpaid[5]	Alien Reinsurers Allocated Loss Adjustment Expenses Paid and Unpaid on Premiums Ceded[3]	Plaintiff Claim Resolution Costs (.9*[1+2+3 Expenses of Workers Compensation])	Court Costs[1]	Jurors Foregone Earnings[2]	Total Admin. Costs
1979	$3.28	$.515	$.0685	$2.90	$.208	$.025	$ 6.99
1980	$3.63	$.563	$.0733	$3.22	$.250	$.029	$ 7.76
1981	$3.95	$.597	$.0854	$3.48	$.281	$.032	$ 8.42
1982	$4.36	$.628	$.0898	$3.82	$.304	$.034	$ 9.24
1983	$4.88	$.681	$.0987	$4.18	$.318	$.036	$10.19
1984	$6.71	$.943	$.1401	$5.67	$.338	$.038	$13.84

* See Appendix A.1 for details of this estimation techinque.

[1] For Estimation Techniques see Appendix A.7.

[2] For Estimation Techniques see Appendix A.4.

[3] For Estimation Techniques see Appendix A.5.

[4] A.M. Best Aggregates and Averages, Schedule P, Oldwick, New Jersey, 1985.

[5] For Estimation Techniques see Appendix A.6.

TABLE 3.2

METHOD 1 ESTIMATE

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL AND LIMITED JURISDICTION STATE PLUS U.S. DISTRICT CASES ESTIMATED USING METHOD A*

(in billions)

YEAR	1 Non-Captive Insurance Company Allocated Loss Adjustment Expenses Paid and Unpaid[4]	2 Captive and Self Insureds Insurance Company Allocated Loss Adjustment Expenses Paid and Unpaid[5]	3 Alien Reinsurers Allocated Loss Adjustment Expenses Paid and Unpaid on Premiums Ceded[3]	4 Plaintiff Claim Resolution Costs (.9*[1+2+3 Expenses of Workers Compensation])	5 Court Costs[1]	6 Jurors Foregone Earnings[2]	7 Total Admin. Costs
1979	$3.28	$.515	$.0685	$2.90	$.295	$.029	$ 7.16
1980	$3.63	$.563	$.0733	$3.22	$.338	$.033	$ 7.94
1981	$3.95	$.597	$.0854	$3.48	$.384	$.036	$ 8.63
1982	$4.36	$.628	$.0898	$3.82	$.415	$.039	$ 9.47
1983	$4.88	$.681	$.0987	$4.18	$.434	$.041	$10.42
1984	$6.71	$.943	$.1401	$5.67	$.460	$.044	$14.08

* See Appendix A.1 for details of this estimation techinque.

1. For Estimation Techniques see Appendix A.7.
2. For Estimation Techniques see Appendix A.4.
3. For Estimation Techniques see Appendix A.5.
4. A.M. Best Aggregates and Averages, Schedule P, Oldwick, New Jersey, 1985.
5. For Estimation Techniques see Appendix A.6.

TABLE 3.3

METHOD 1 ESTIMATE

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD B*
(in billions)

	1	2	3	4	5	6	7
YEAR	Non-Captive Insurance' Company Allocated Loss Adjustment Expenses Paid and Unpaid[4]	Captive and Self Insureds Insurance Company Allocated Loss Adjustment Expenses Paid and Unpaid[5]	Alien Reinsurers Allocated Loss Adjustment Expenses Paid and Unpaid on Premiums Ceded[3]	Plaintiff Claim Resolution Costs (.9*[1+2+3 Expenses of Workers Compensation])	Court Costs[1]	Jurors Foregone Earnings[2]	Total Admin. Costs
1979	$3.28	$.515	$.0685	$2.90	$.535	$.071	$ 7.36
1980	$3.63	$.563	$.0733	$3.22	$.573	$.072	$ 8.12
1981	$3.95	$.597	$.0854	$3.48	$.585	$.072	$ 8.77
1982	$4.36	$.628	$.0898	$3.82	$.646	$.079	$ 9.63
1983	$4.88	$.681	$.0987	$4.18	$.692	$.086	$10.61
1984	$6.71	$.948	$.1401	$5.67	$.750	$.093	$14.30

* See Appendix A.2 for details of this estimation techinque.

1. For Estimation Techniques see Appendix A.7.
2. For Estimation Techniques see Appendix A.4.
3. For Estimation Techniques see Appendix A.5.
4. A.M. Best Aggregates and Averages, Schedule P, Oldwick, New Jersey, 1985.
5. For Estimation Techniques see Appendix A.6.

TABLE 3.4

METHOD 1 ESTIMATES

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL AND LIMITED JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD B*
(in billions)

	1	2	3	4	5	6	7
YEAR	Non-Captive Insurance Company Allocated Loss Adjustment Expenses Paid and Unpaid[4]	Captive and Self Insureds Insurance Company Allocated Loss Adjustment Expenses Paid and Unpaid[5]	Alien Reinsurers Allocated Loss Adjustment Expenses Paid and Unpaid on Premiums Ceded[3]	Plaintiff Claim Resolution Costs (.9*[1+2+3 Expenses of Workers Compensation])	Court Costs[1]	Jurors Foregone Earnings[2]	Total Admin. Costs
1979	$3.28	$.515	$.0685	$2.90	$.587	$.0732	$ 7.41
1980	$3.63	$.553	$.0733	$3.22	$.643	$.0752	$ 8.20
1981	$3.95	$.597	$.0854	$3.48	$.673	$.0761	$ 8.86
1982	$4.36	$.628	$.0898	$3.82	$.743	$.0837	$ 9.73
1983	$4.88	$.681	$.0987	$4.18	$.796	$.0909	$10.72
1984	$6.71	$.943	$.1401	$5.67	$.862	$.0982	$14.24

* See Appendix A.2 for details of this estimation techinque.

1. For Estimation Techniques see Appendix A.7.
2. For Estimation Techniques see Appendix A.4.
3. For Estimation Techniques see Appendix A.5.
4. A.M. Best *Aggregates and Averages*, Schedule P, Oldwick, New Jersey, 1985.
5. For Estimation Techniques see Appendix A.6

Figure 3.1

Administrative Cost of the Tort System:
Method 1 Estimate,
General Jurisdiction State Plus U.S.
District Cases Only Estimated Using
Method A
(in billions)

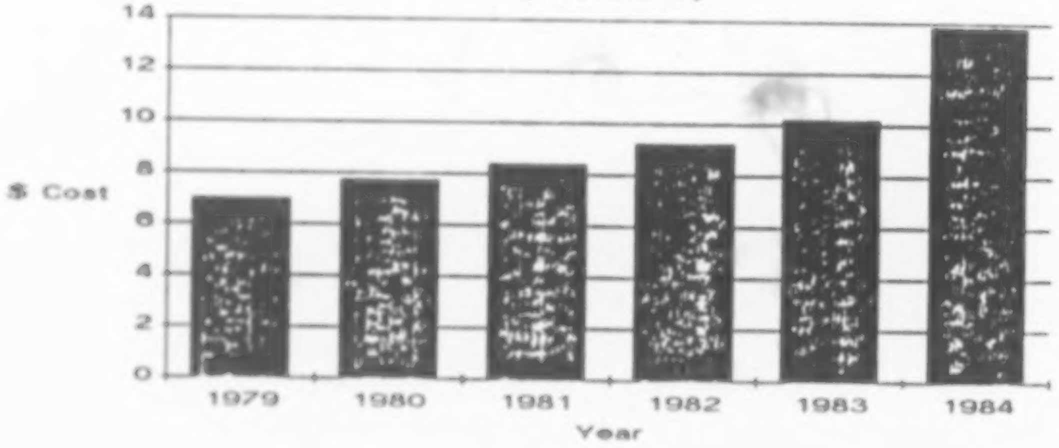


Figure 3.2

Administrative Cost of the Tort System:
Method 1 Estimate
General and Limited Jurisdiction State Plus
U.S. District Cases Estimated Using
Method A
(in billions)

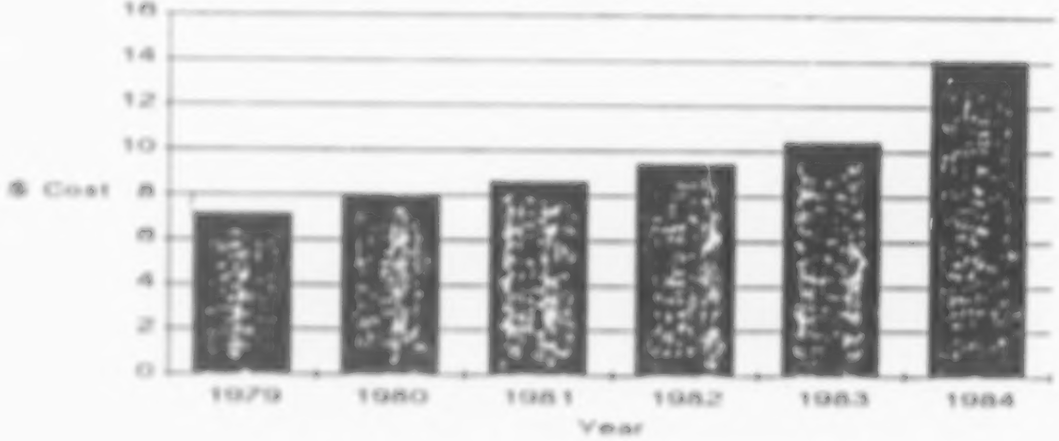


Figure 3.3

Administrative Cost of the Tort System:
Method 1 Estimate
General Jurisdiction State Plus U.S.
District Cases Only Estimated Using
Method B
(in billions)

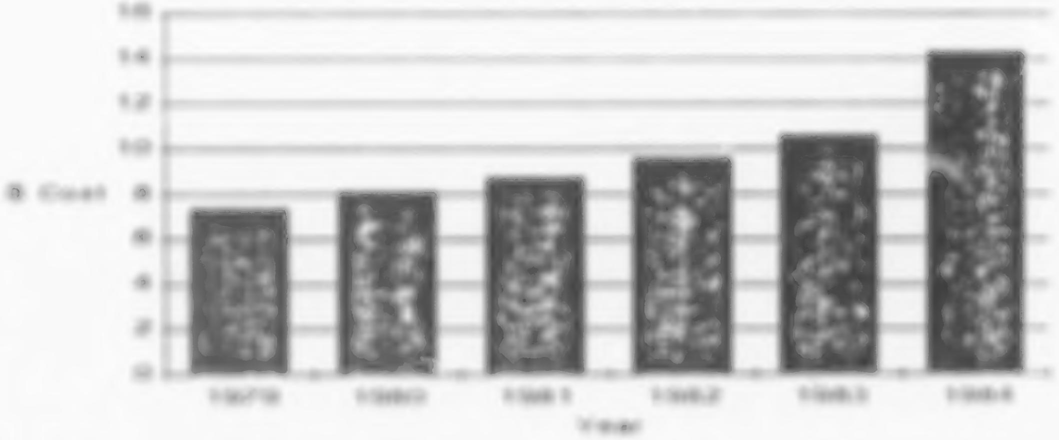
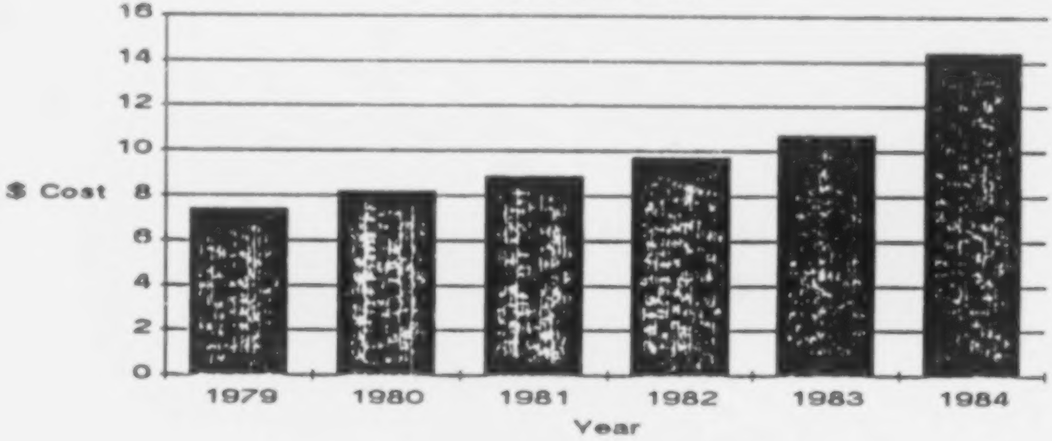


Figure 3.4

Administrative Cost of the Tort System:
Method 1 Estimate
General and Limited Jurisdiction State Plus
U.S. District Cases Estimated Using
Method B
(in billions)



derived using this method of calculation are fairly insensitive to our assumptions concerning the number of court cases filed since, in this method, the total number of court cases filed affects only the estimates of total court costs and jurors forgone earnings. These costs are relatively small, in comparison to loss adjustment expenses and plaintiff claim resolution costs of the system. For instance, Table 3.1 shows that in 1984, total court plus juror costs were only 2.8% of the administrative cost of the system. This percentage is approximately the same for our other estimates in tables 3.2-3.4. As should be obvious, the huge legal costs that insurance companies and plaintiffs incur in the process of resolving claims drives this estimate. They represent more than 97% of the total.

3.2: Sensitivity Analysis:

To get a better idea of the elements that control these estimates, let us list all of the assumptions which underlie them. We will then vary some of the assumptions in order to see how sensitive our estimates are to the underlying assumptions.

Assumptions of Method 1:

A.1) Captive and Self-Insureds Allocated Loss Expenses = (estimated premiums earned of captive and self-insured)
x (allocated loss adjustment expenses)/(premium earned) ratio of non-captive insurance companies

A.2) Alien reinsurance less expenses = (premiums ceded abroad to alien reinsurers)
x (allocated loss adjustment expenses)/(premium earned) ratio of non-captive insurance companies

A.3) The fraction of premiums ceded abroad for reinsurance in Schedule P lines is the same as the fraction of total premiums ceded abroad in all lines.

A.4) Plaintiff Claims Resolution costs = (Insurance Industry allocated loss adjustment expenses) x (.90)[26]

A.5) All juries are composed of six people

A.6) Jurors forgone earnings equal the average hourly wage rate in the economy

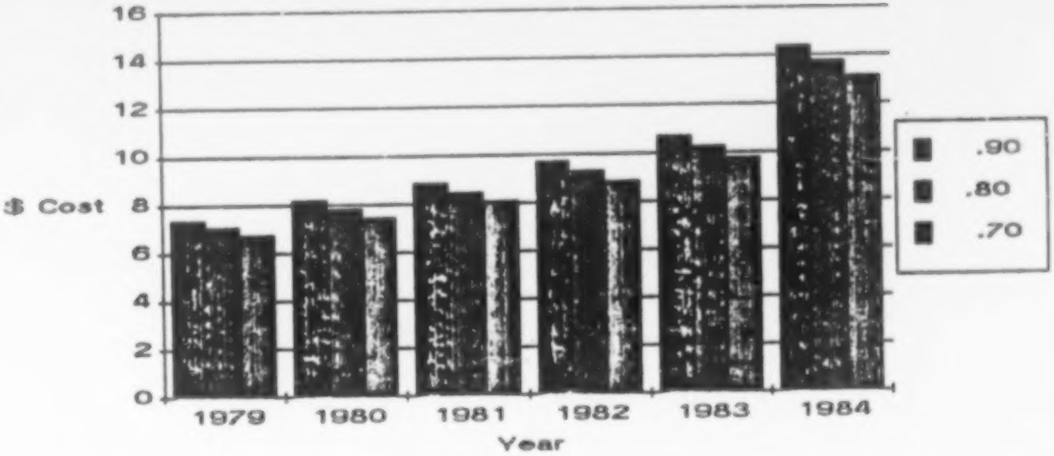
A.7) Total court cases filed are calculated as outlined by our four methods outlined above and detailed in Appendices A.1 - A.3.

As one can easily see from tables 3.1-3.4, most of these assumptions should not have much of an impact on our calculations except, possibly, the assumption that plaintiffs' legal costs are .90 of total industry allocated loss expense costs. This is true because our Method 1 calculation is dominated by the legal expenses of insurance companies and plaintiffs. (These costs account for approximately 97% of the total). Juror costs, for instance, are typically 2/10 of 1% of the total administrative costs and, hence, assumptions about them can be expected not to affect the total greatly. In Figure 3.5 below, we vary the .90 assumption by lowering the assumed (plaintiff cost/defense cost) ratio from .90 to .80 and then to .70 of the total insurance industry allocated expenses. To economize on space, we do this only for the calculation presented in figure 3.4. As we see in figure 3.5, while this change obviously lowers our estimates, the total administrative costs of the tort system is not greatly affected, dropping in 1984 from $14.42 billion to $13.79 billion and $13.16 billion under the .80 and .70 assumptions respectively.

[26] Excluding allocated loss adjustment expenses of the worker's compensation system.

Figure 3.5

Effects of Changing Plaintiff Legal Cost
Assumption:
Plaintiff's Legal Cost Equal to .90, .80 and
.70 of Defense Cost
(in billions)



3.3: Method 2 Estimates:

Our Method 2 estimates are related to our Method 1 estimate in an obvious way--they differ only by a constant in each year--the unallocated loss adjustment expenses of the insurance industry. Tables 3.5-3.8 present these estimates while figures 3.6-3.9 portray them. Here, again, our various estimates do not vary greatly from one another. As a general rule, the administrative costs of the tort system under this calculation start at approximately $10 billion in 1979 and rise to approximately $17 billion in 1984. With an average rate of growth of 10.3%, we can expect the administrative costs of the tort system to reach approximately $28 billion by 1990 and to cost us approximately $115 billion over the next five years.

3.4: Sensitivity Analysis:

Since method 2 is identical to method 1 except for the addition of unallocated loss adjustment expenses, it involves the use of all our assumptions A.1-A.7 along with assumption A.8.

A.8 All unallocated costs would be allocable under some appropriately defined tort system which was less prone to litigation.

This assumption allows us to simply add in all unallocated loss expenses to our Method 1 calculation. This is, admittedly, rather extreme. Figure 3.10 demonstrates how this assumption affects our estimates by including only 80%, 60% and then 40% of these unallocated costs. Again, to economize on space we make this change only for the calculation made in Table 3.8. While the total is decreased, the impact substantial is not dramatic, decreasing from $17.58 billion in 1984 to $16.9, $16.3, and $15.6 billion under the 80%, 60% and 40% assumptions respectively.

TABLE 3.5

METHOD 2 ESTIMATE

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD A*
(in billions)

YEAR	Non-Captive Domestic Insurance Company Total Loss Adjustment Expenses Paid and Unpaid[4]	Captive and Self Insureds Insurance Company Total Loss Adjustment Expenses Paid and Unpaid[5]	Alien Reinsurers Total Loss Adjustment Expenses Paid and Unpaid on Premiums Ceded[3]	Plaintiff Claim Resolution Costs (.9*[1+2+3 Expenses of Workers Compensation])	Court Costs[1]	Jurors Foregone Earnings[2]	Total Admin. Costs
1979	$6.04	$ .951	$.127	$2.90	$.208	$.025	$10.26
1980	$6.71	$1.042	$.136	$3.22	$.250	$.029	$11.39
1981	$7.21	$1.090	$.156	$3.48	$.281	$.032	$12.25
1982	$7.78	$1.121	$.160	$3.82	$.304	$.034	$13.23
1983	$8.32	$1.163	$.168	$4.18	$.318	$.036	$14.18
1984	$9.43	$1.327	$.197	$5.67	$.338	$.038	$17.00

* See Appendix A.1 for details of this estimation techinque.

[1] For Estimation Techniques see Appendix A.7.

[2] For Estimation Techniques see Appendix A.4.

[3] For Estimation Techniques see Appendix A.5.

[4] A.M. Best Aggregates and Averages, Schedule P, Oldwick, New Jersey, 1985.

[5] For Estimation Techniques see Appendix A. .

TABLE 3.6

METHOD 2 ESTIMATE

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL AND LIMITED JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD A*
(in billions)

	1	2	3	4	5	6	7
YEAR	Non-Captive Domestic Insurance Company Allocated Loss Adjustment Expenses Paid and Unpaid^{4}	Captive and Self Insureds Insurance Company Allocated Loss Adjustment Expenses Paid and Unpaid^{5}	Alien Reinsurers Allocated Loss Adjustment Expenses Paid and Unpaid on Premiums Ceded^{3}	Plaintiff Claim Resolution Costs (.9*[1+2+3 Expenses of Workers Compensation])	Court Costs^{1}	Jurors Foregone Earnings^{2}	Total Admin. Costs
1979	$6.04	$ .951	$.127	$2.90	$.295	$.029	$10.35
1980	$6.71	$1.042	$.136	$3.22	$.338	$.033	$11.48
1981	$7.21	$1.090	$.156	$3.48	$.384	$.036	$12.36
1982	$7.78	$1.121	$.160	$3.82	$.415	$.039	$13.34
1983	$8.32	$1.163	$.168	$4.18	$.434	$.041	$14.30
1984	$9.43	$1.327	$.197	$5.67	$.460	$.044	$17.13

* See Appendix A.1 for details of this estimation techinque.

1. For Estimation Techniques see Appendix A.7.
2. For Estimation Techniques see Appendix A.4.
3. For Estimation Techniques see Appendix A.5.
4. A.M. Best Aggregates and Averages, Schedule P, Oldwick, New Jersey, 1985.
5. For Estimation Techniques see Appendix A.7.

TABLE 3.7

METHOD 2 ESTIMATE

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD B*
(in billions)

	1	2	3	4	5	6	7
YEAR	Non-Captive Domestic Insurance Company Allocated Loss and Adjustment Expenses Paid and Unpaid[4]	Captive and Self Insureds Insurance Company Allocated Loss Adjustment Expenses Paid and Unpaid[5]	Alien Reinsurers Loss Adjustment Expenses Paid and Unpaid on Premiums Ceded[3]	Plaintiff Claim Resolution Costs (.9*[1+2+3 Expenses of Workers Compensation])	Court Costs[1]	Jurors Foregone Earnings[2]	Total Admin. Costs
1979	$6.04	$ .951	$.127	$2.90	$.535	$.071	$10.63
1980	$6.71	$1.042	$.136	$3.22	$.573	$.072	$11.75
1981	$7.21	$1.090	$.156	$3.48	$.585	$.072	$12.59
1982	$7.78	$1.121	$.160	$3.82	$.646	$.079	$13.61
1983	$8.32	$1.163	$.168	$4.18	$.692	$.086	$14.60
1984	$9.43	$1.327	$.197	$5.67	$.750	$.093	$17.47

* See Appendix A.2 for details of this estimation techinque.

[1] For Estimation Techniques see Appendix A.7.

[2] For Estimation Techniques see Appendix A.4.

[3] For Estimation Techniques see Appendix A.5.

[4] A.M. Best Aggregates and Averages, Schedule P, Oldwick, New Jersey, 1985.

[5] For Estimation Techniques see Appendix A.6..

TABLE 3.8

METHOD 2 ESTIMATE

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL AND LIMITED JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD B*
(in billions)

	1	2	3	4	5	6	7
YEAR	Non-Captive Domestic Insurance Company Allocated Loss Adjustment Expenses Paid and Unpaid[4]	Captive and Self Insureds Insurance Company Allocated Loss Adjustment Expenses Paid and Unpaid[5]	Alien Reinsurers Allocated Loss Adjustment Expenses Paid and Unpaid on Premiums Ceded[3]	Plaintiff Claim Resolution Costs (.9*[1+2+3])	Court Costs[1]	Jurors Foregone Earnings[2]	Total Admin. Costs
1979	$6.04	$ .951	$.127	$2.90	$.587	$.0732	$10.68
1980	$6.71	$1.042	$.136	$3.22	$.643	$.0752	$11.92
1981	$7.21	$1.090	$.156	$3.48	$.673	$.0761	$12.68
1982	$7.78	$1.121	$.160	$3.82	$.743	$.0837	$13.71
1983	$8.32	$1.163	$.168	$4.18	$.796	$.0909	$14.71
1984	$9.43	$1.327	$.197	$5.67	$.862	$.0982	$17.58

* See Appendix A. for details of this estimation techinque.

1. For Estimation Techniques see Appendix A.7.
2. For Estimation Techniques see Appendix A.4.
3. For Estimation Techniques see Appendix A.5.
4. A.M. Best Aggregates and Averages, Schedule P, Oldwick, New Jersey, 1985.
5. For Estimation Techniques see Appendix A.6.

Figure 3.6

Method 2 Estimate
Administrative Cost of the Tort System:
General Jurisdiction State Plus U.S.
District Cases Only Estimated Using
Method A
(in billions)

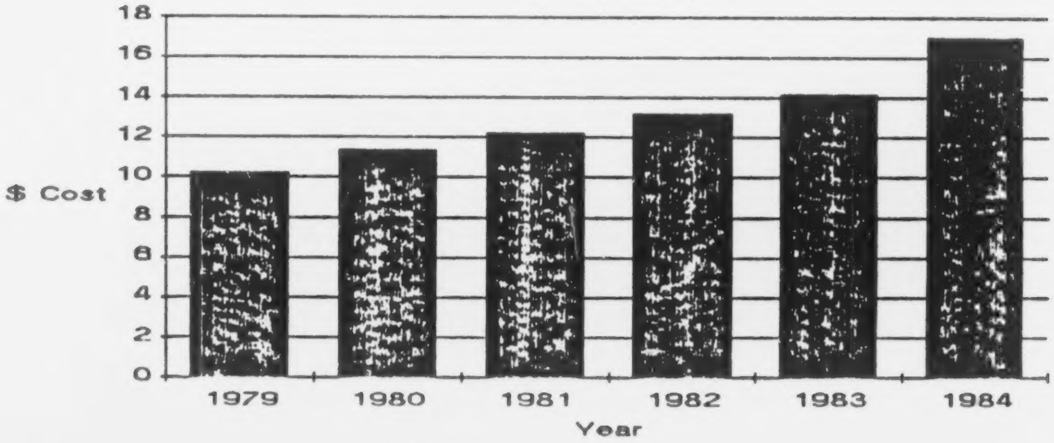


Figure 3.7

Method 2 Estimate
Administrative Cost of the Tort System:
General and Limited Jurisdiction State
Plus U.S. District Cases Estimated Using
Method A
(in billions)

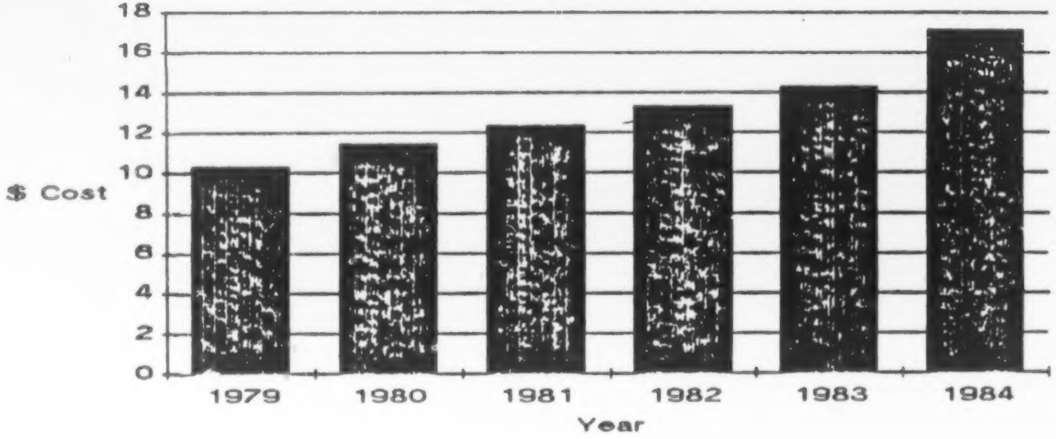


Figure 3.8

Method 2 Estimate
Administrative Cost of the Tort System:
General Jurisdiction State Plus U.S.
District Cases Only Estimated Using
Method B
(in billions)

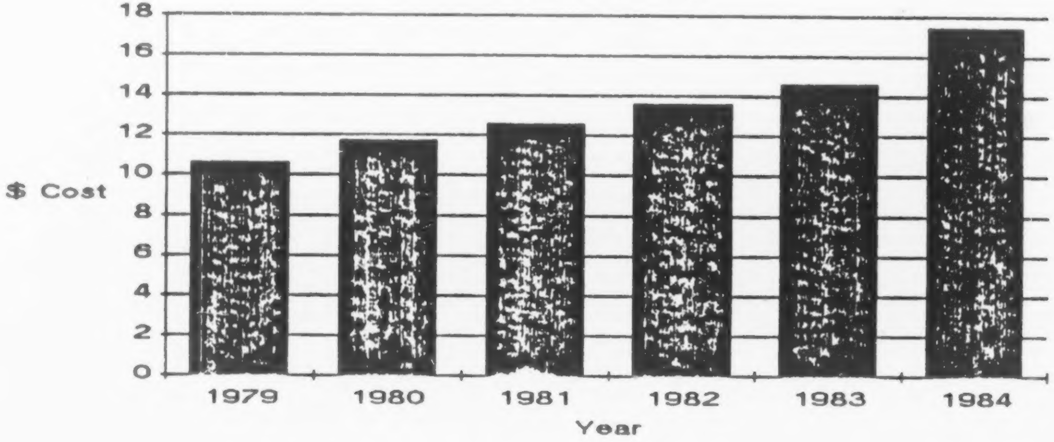


Figure 3.9

Method 2 Estimate
Administrative Cost of the Tort System:
General and Limited Jurisdiction State
Plus U.S. District Cases Estimated Using
Method B
(in billions)

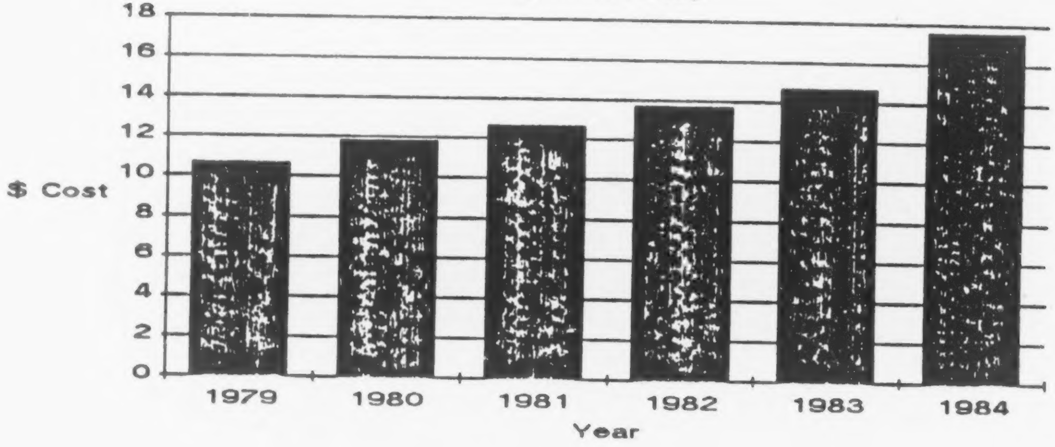
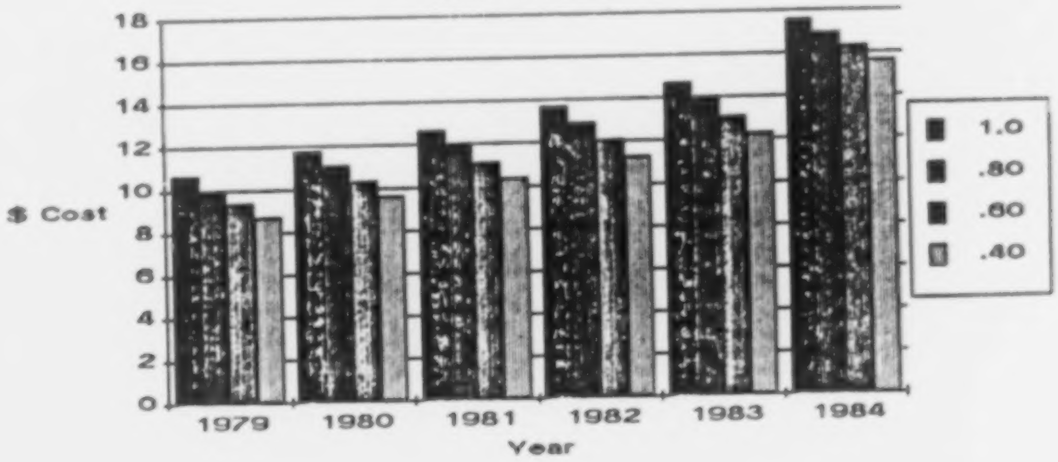


Figure 3.10

Effects of Changing Unallocated Cost Assumption: Potentially Allocable Costs Equal to 1.00, .80, .60 and .40 of Current Unallocated Cost (in billions)



3.5: Method 3

The estimates for the total administrative costs of the tort system are both the highest and the lowest using our Methods 3 and 4. This is true because these estimates are extremely sensitive to our method of calculating the total number of tort cases filed in state and federal courts, as well as the legal billing rates we use and our assumption about average hourly legal input into tort cases. Hence, after presenting our Method 3 estimates, we will vary our billing rate and time input assumptions to see how sensitive our calculations are to these changes. (We have already varied our estimates of the total number of tort cases four ways by using methods A and B to approximate them and by counting two different types of court filings.)

Tables 3.9-3.12 and figures 3.11-3.14 present our calculations. Here we see that, while some estimates are higher than those presented by Methods 1 and 2, some are clearly smaller (see table 3.13). For instance, 1984 administrative costs range from a low of $9.05 billion using Method A for calculating court cases filed and including only general jurisdiction filings to a high of $23.7 billion using Method B, which includes general plus limited jurisdiction filings. The reason for this difference is obviously the fact that the number of court cases filed using Method B is two to three times the number estimated using Method A, depending upon whether you count limited jurisdiction cases or not. It is our belief that Method B is probably the better method since it implies that approximately 19% of all civil cases filed are tort cases while Method A implies a percentage of only about 6% -- clearly too small a percentage.[27] The rate of growth of the administrative cost is

[27] As a cross check we calculated the number of tort cases filed in yet a third way (Method C) by relying on an estimate by Lieberman (1982) that, for every civil court case filed in U.S. District Court there are between 70 and 100 filed in State courts. Appendix A.3 presents these calculations which indicate that in 1984 almost 2.75 million cases were filed, nearly 1 million more than our largest estimate using Methods A and B.

TABLE 3.9

METHOD 3 ESTIMATE

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD A*
(in billions)

	1	2	3	4	5	6	7	
YEAR	Total Number Court Cases Filed in State General Jurisdiction Courts and U.S. District[1] Courts	Avg. Number Hours Per Case[2]	Total Number of Lawyers Employed By Plaintiff - Defense	Avg. Billing Rate Per Hour[3]	Total Legal Costs (in billions)	Court Costs (in billions)	Jurors' Foregone Income (in billion)[4]	Total Admin. (Costs)
1979	593141	68.099	2	$68.2	$5.51	$.208	$.025	$5.74
1980	621417	68.099	2	$75.99	$6.43	$.250	$.029	$6.71
1981	633806	68.099	2	$81.63	$7.05	$.281	$.032	$7.36
1982	641980	68.099	2	$85.99	$7.52	$.304	$.034	$7.86
1983	648823	68.099	2	$94.96	$8.39	$.318	$.036	$8.75
1984	656349	68.099	2	$97.07	$8.68	$.338	$.038	$9.05

* See Appendix A.1 for details of this estimation techinque.

[1] For Estimation Techniques see Appendix A.1.

[2] For Estimation Techniques see Appendix A.8.

[3] For Estimation Techniques see Appendix A.9.

[4] A.M. Best Aggregates and Averages, Schedule P, Oldwick, New Jersey, 1985.

TABLE 3.10

METHOD 3 ESTIMATE

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL AND LIMITED JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD A*
(in billions)

	1		2		3	4	5		6	7	
YEAR	Total Number Court Cases Filed in State General Jurisdiction Courts and U.S. District[1] Courts		Avg. Number Hours Per Case[2]		Total Number of Lawyers Employed By Plaintiff Defense	Avg. Billing Rate Per Hour[3]	Total Legal Costs (in billions)		Court Costs (in billions)	Jurors' Foregone Income (in billion)[4]	Total Admin. (Costs)
	GJ/ Dist.	Ltd.	Gen./ Dist.	Ltd.			GJ/ Dist.	Ltd.	GJ Dist.& Ltd.	GJ Dist.& Ltd.	
1979	593141	288070	68.09	30	2	$68.2	$5.51	$1.18	$.295	$.029	$ 7.012
1980	621417	257344	68.09	30	2	$75.99	$6.43	$1.18	$.338	$.032	$ 7.976
1981	633806	273723	68.09	30	2	$81.63	$7.05	$1.34	$.384	$.036	$ 8.808
1982	641980	276448	68.09	30	2	$85.99	$7.52	$1.43	$.415	$.039	$ 9.399
1983	648823	279050	68.09	30	2	$94.96	$8.39	$1.59	$.434	$.041	$10.456
1984	656349	281594	68.09	30	2	$97.07	$8.68	$1.64	$.460	$.043	$10.821

* See Appendix A.1 for details of this estimation techinque.

1. For Estimation Techniques see Appendix A.1.
2. For Estimation Techniques see Appendix A.8.
3. For Estimation Techniques see Appendix A.9.
4. A.M. Best Aggregates and Averages, Schedule P, Oldwick, New Jersey, 1985.

TABLE 3.11

METHOD 3 ESTIMATE

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD B*
(in billions)

YEAR	1 Total Number Court Cases Filed in State General Jurisdiction Courts and U.S. District Courts[1]	2 Avg. Number Hours Per Case[2]	3 Total Number of Lawyers Employed By Plaintiff - Defense	4 Avg. Billing Rate Per Hour[3]	5 Total Legal Costs (in billions)	6 Court Costs (in billions)	7 Jurors' Foregone Income (in billion)[4]	Total Admin. (Costs)
1979	1679703	68.09	2	$68.2	$15.60	$.535	$.071	$16.21
1980	1567583	68.09	2	$75.99	$16.22	$.573	$.072	$16.87
1981	1440344	68.09	2	$81.63	$16.01	$.585	$.072	$16.67
1982	1495300	68.09	2	$85.99	$17.51	$.646	$.079	$18.24
1983	1551171	68.09	2	$94.96	$20.06	$.692	$.086	$20.84
1984	1609906	68.09	2	$97.07	$21.28	$.750	$.093	$22.13

* See Appendix A.2 for details of this estimation techinque.

[1] For Estimation Techniques see Appendix A.2.

[2] For Estimation Techniques see Appendix A.8.

[3] For Estimation Techniques see Appendix A.9.

[4] A.M. Best *Aggregates and Averages*, Schedule P, Oldwick, New Jersey, 1985.

TABLE 3.12

METHOD 3 ESTIMATE

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL AND LIMITED JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD B*
(in billions)

YEAR	1 Total Number Court Cases Filed in State General Jurisdiction Courts and U.S. District Courts*		2 Avg. Number Hours Per Case		3 Total Number of Lawyers Employed By Plaintiff - Defense	4 Avg. Billing Rate Per Hour	5 Total Legal Costs (in billions)		6 Court Costs (in billions)	7 Jurors' Foregone Income (in billion)	Total Admin. (Costs)
	GJ/ Dist.	Ltd.	Gen./ Dist.	Ltd.			GJ/ Dist.	Ltd.	GJ Dist.& Ltd.	GJ Dist.& Ltd.	
1979	1679703	175560	68.09	30	2	$68.2	$15.60	$ .718	$.587	$.0732	$16.98
1980	1567583	203670	68.09	30	2	$75.99	$16.22	$ .928	$.642	$.0732	$17.87
1981	1440344	233988	68.09	30	2	$81.63	$16.01	$1.146	$.673	$.0760	$17.90
1982	1495300	242763	68.09	30	2	$85.99	$17.51	$1.252	$.743	$.0836	$19.59
1983	1551171	251866	68.09	30	2	$94.96	$20.06	$1.435	$.795	$.0908	$22.38
1984	1609906	261311	68.09	30	2	$97.07	$21.28	$1.521	$.862	$.0981	$23.76

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* See Appendix A.2.

Figure 3.11

Method 3 Estimate
Administrative Cost of the Tort System:
General Jurisdiction State Plus U.S.
District Cases Only Estimated Using
Method A
(in billions)

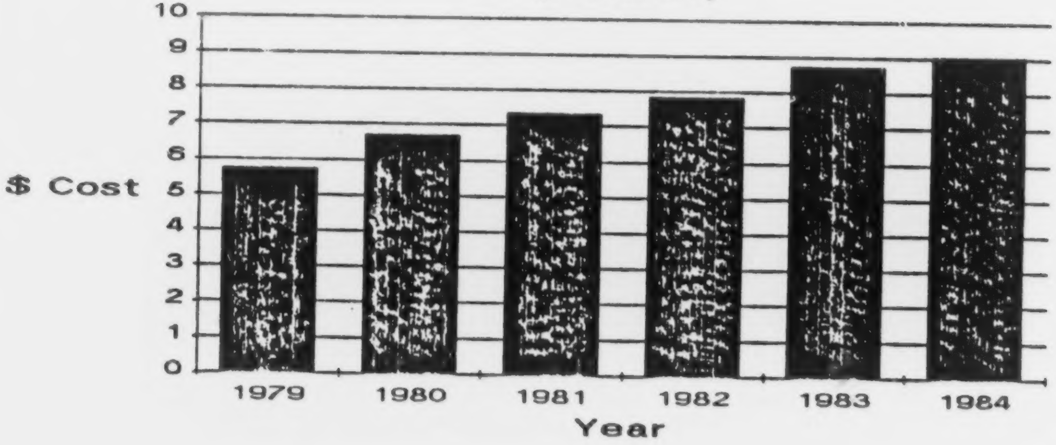


Figure 3.12

Method 3 Estimate
Administrative Cost of the Tort System:
General and Limited Jurisdiction State Plus
U.S. District Cases Estimated Using
Method A
(in billions)

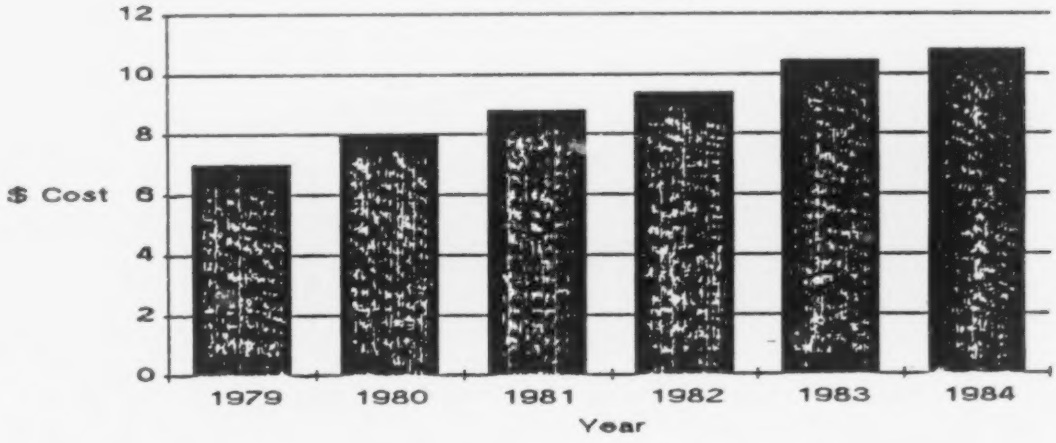


Figure 3.13

Method 3 Estimate
Administrative Cost of the Tort System:
General Jurisdiction State Plus U.S.
District Cases Only Estimated Using
Method B
(in billions)

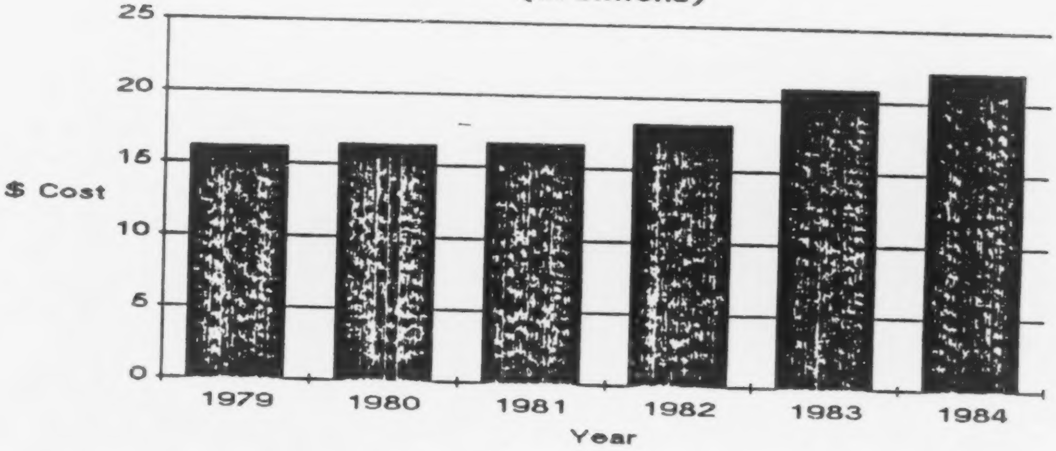
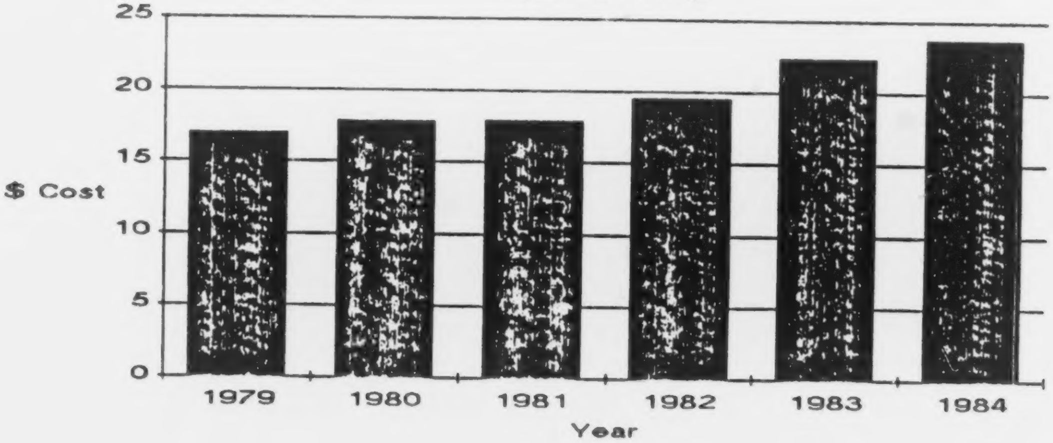


Figure 3.14

Method 3 Estimate
Administrative Cost of the Tort System:
General and Limited Jurisdiction State Plus
U.S. District Cases Estimated Using
Method B
(in billions)



less here than under our previous methods, as is clear from figures 3.1-3.4 as compared to figures 3.11-3.14. This is true mostly because court cases filed did not grow as quickly as loss adjustment expenses over the period. We estimate that if the rates of growth of administrative costs continue to rise as estimated by Method 3, these costs will equal between $13.87 and $30.83 billion per year by 1990 and will cost us between $59 and $134.9 billion over the next five years.

3.6: Sensitivity Analysis

Since Method 3 presents an entirely new method for estimating the administrative costs of the tort system, we must list the assumptions underlying it separately.

Assumptions of Method 3:

A.9 Each case filed in state courts of general jurisdiction and U.S. District Court consumes, on average, 68 hours of legal time by both plaintiff and defense counsel.[28]

A.10 Cases filed in state courts of limited jurisdiction consume only 30 hours (the median number of hours for tort cases reported in the Civil Litigation Research Project data)[29]

A.11 The average legal billing rates in the United States over the period 1979-1984 were equal to the ones estimated by the Altman and Weil (1985) data, $68.2, $75.99, $85.99, $94.96, and $97.07 repectively.[30]

From this list of assumptions, it is obvious that these estimates depend very heavily on our assumptions concerning billing rates, legal time and court cases filed. For instance, in Table 3.12, for each dollar increase in our assumed billing rate in 1984, the total administrative cost of the tort system would increase by $3.7 million. To investigate this sensitivity, we assume

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[28] See Civil Litigation research project data in Appendix A.8.

[29] See Civil Litigation Research Project Data in

[30] See Appendix A.9.

Figure 3.15

**Effects of Changing Legal Hourly Billing Rates:
Legal Rates Equal to 1.1, 1.0, .90 and .80 of Estimated Rates
(in billions)**

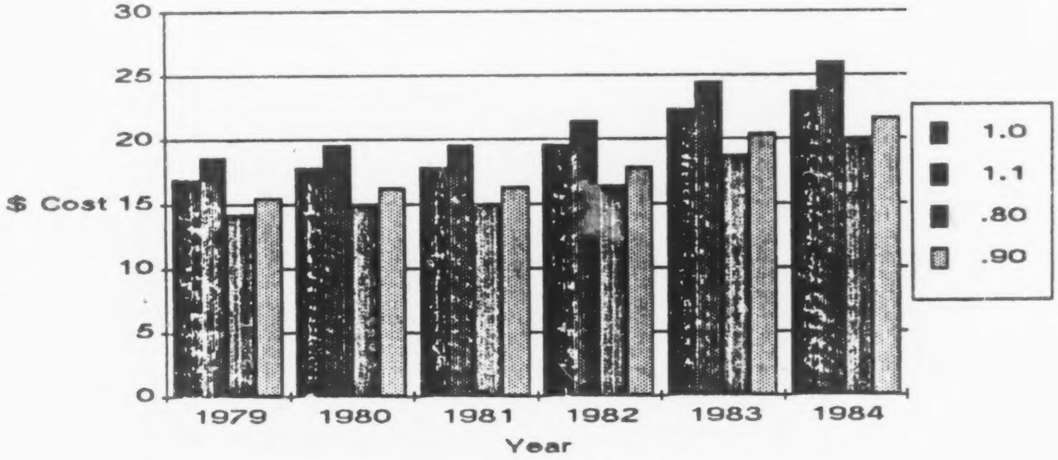
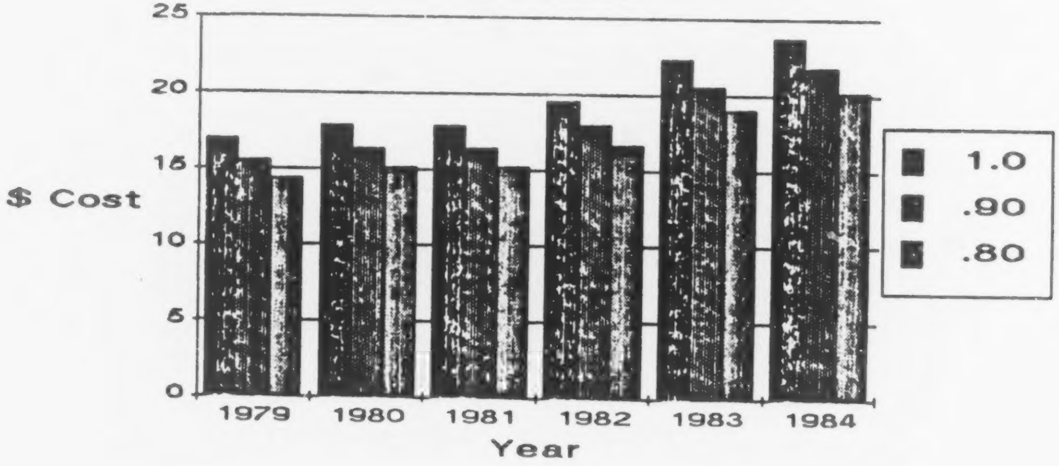


Figure 3.16

Effects of Changing Annual Average
Number of Legal Hours per Tort Case:
Legal Hours per Tort Case Equal 1.0, .90
and .80 of Estimated Hourly Rate
(in billions)



that these billing rates in each year were either overestimated by 10% or 20% or underestimated by 10% and then calculate another set of estimates. The results are presented in Figure 3.15 for the calculation presented in Table 3.12. Lowering our billing rate assumption by 10% (20%), reduced the total administrative cost of the tort system in 1984 by $2.0 ($3.8) billion. Increasing it by 10% increases the cost likewise. To investigate the effects of changing assumption A.9, we assumed that the average number of hours worked on a typical tort case was not 68 hours but rather .90 and .80 of 68 hours. The results of this change are presented in Figure 3.16.

3.7: Method 4 Estimates:

As described in Section 2, Method 4 estimates the total administrative cost of the tort system by imputing non-legal fee costs (i.e. expert witness costs, litigant time, out-of-pocket expenses) and the legal costs of claims for which lawyers are employed but for which no court filing results and then adds these costs to those estimated in the Method 3 calculation. Consequently, this method yields larger estimates. These estimates are presented in Tables 3.13-3.16 and Figures 3.17-3.20.

As we can see, these estimates are quite varied ranging from $10.5 - $27.7 billion in 1984. The reason for this substantial variance is that, while the calculations in Table 3.13 and 3.14 employ Method A to calculate court cases filed, the estimates in 3.15 and 3.16 employ Method B. In addition, in Method 4, the litigants incur both legal and non-legal costs. Finally, we include the legal cost of claims made for which no case if filed. This final assumption greatly increases the total. It also explains why these estimates are larger than our estimates using A.M. Best data since we assume that the legal costs for claims settled before filing are borne totally by plaintiffs. Hence these costs, which could be as much as $3 billion, are excluded from A.M. Best Schedule P data.

TABLE 3.13

METHOD 4 ESTIMATES

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD A*

YEAR	Total Number of Court Cases Filed in State General Jurisiction Courts, and U.S. District Courts1	Average Number of Hours Per Case2	Total Number of Lawyers Employed By Plaintiff and Defense
1979	593141	68.09	2
1980	621417	68.09	2
1981	633806	68.09	2
1982	641980	68.09	2
1983	648823	68.09	2
1984	656349	68.09	2

YEAR	Average Billing Rate3	Total Legal Costs of Cases Filed (in Billions)	Legal Costs of Claims Settled Before Filing4 (in Billions)
1979	68.2	$5.51	$ .864
1980	75.99	$6.43	$1.008
1981	81.63	$7.05	$1.104
1982	85.99	$7.52	$1.178
1983	94.96	$8.39	$1.315
1984	97.07	$8.68	$1.360

YEAR	Non-Legal Costs (i.e., expert witnesses, litigant's time, etc.,) in Billions	Total Legal Costs in (Billions)	Court Costs (in Billions)5
1979	$.056	$6.429	$.208
1980	$.065	$7.504	$.251
1981	$.071	$8.222	$.281
1982	$.076	$8.773	$.305
1983	$.085	$9.791	$.319
1984	$.088	$10.125	$.338

YEAR	Juror's Forgone Earnings6 (in Billions)	Total Administrative Costs (in Billions)
1979	$.025	$6.66
1980	$.067	$7.78
1981	$.074	$8.53
1982	$.079	$9.11
1983	$.087	$10.14
1984	$.091	$10.50

1. See Appendix A.7.
2. See Appendix A.8
3. See Appendix A.9
4. See Appendix A.10
5. See Appendix A.4
6. See Appendix A.5

TABLE 3.14

METHOD 4 ESTIMATES

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL AND LIMITED JURISDICTION STATE PLUS U.S. DISTRICT CASES ESTIMATED USING METHOD A

	Total Number of Court Cases Filed in State General Jurisiction Courts, and U.S. District Courts[1]		Average Number of Hours Per Case2		Total Number of Lawyers Employed By Plaintiff and Defense
YEAR	Gen./Jurisdiction and U.S. Dist.	Ltd.	Gen./Dist.	Limited	
1979	593141	288020	68.09	30	2
1980	621417	257344	68.09	30	2
1981	633806	273723	68.09	30	2
1982	641980	276448	68.09	30	2
1983	648823	279050	68.09	30	2
1984	656349	281594	68.09	30	2

	Average Billing Rate3	Total Legal Costs of Cases Filed (in Billions)		Legal Costs of Claims Settled Before Filing4 (in Billions)	
YEAR		Gen/Dist.	Ltd.	Gen/Dist.	Ltd.
1979	68.2	$5.51	$1.16	$ .864	$.419
1980	75.99	$6.43	$1.17	$1.008	$.375
1981	81.63	$7.05	$1.34	$1.104	$.399
1982	85.99	$7.52	$1.43	$1.178	$.402
1983	94.96	$8.39	$1.59	$1.315	$.406
1984	97.07	$8.68	$1.64	$1.360	$.410

	Non-Legal Costs (i.e., expert witnesses, litigant's time, etc.,) in (Billions)		Total Legal Costs in (Billions)	Court Costs (in Billions)5
YEAR	Gen/Dist.	Limited		
1979	$.056	$.012	$8.039	$.295
1980	$.065	$.012	$9.064	$.338
1981	$.071	$.014	$9.975	$.384
1982	$.076	$.014	$10.616	$.391
1983	$.085	$.016	$11.804	$.414
1984	$.088	$.017	$12.192	$.436

YEAR	Juror's Forgone Earnings6 (in Billions)	Total Administrative Costs (in Billions)
1979	$.029	$8.36
1980	$.033	$9.43
1981	$.036	$10.39
1982	$.039	$11.07
1983	$.041	$12.27
1984	$.044	$12.69

1) See Appendix A.1
2) See Appendix A.8
3) See Appendix A.9
4) See Appendix A.10
5) See Appendix A.4
6) See Appendix A.6

TABLE 3.15

METHOD 4 ESTIMATES

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD B

YEAR	Total Number of Court Cases Filed in State General Jurisiction Courts, and U.S. District Courts[1]	Average Number of Hours Per Case[2]	Total Number of Lawyers Employed By Plaintiff and Defense
1979	1679703	68.09	2
1980	1567583	68.09	2
1981	1440344	68.09	2
1982	1495300	68.09	2
1983	1551171	68.09	2
1984	1609906	68.09	2

YEAR	Average Billing Rate[3]	Total Legal Costs of Cases Filed (in Billions)	Legal Costs of Claims Settled Before Filing[4] (in Billions)
1979	68.2	$15.16	$2.45
1980	75.99	$16.22	$2.54
1981	81.63	$16.01	$2.51
1982	85.99	$17.51	$2.74
1983	94.96	$20.06	$3.14
1984	97.07	$21.28	$3.34

YEAR	Non-Legal Costs (i.e., expert witnesses, litigant's time, etc.,) in Billions	Total Legal Costs in (Billions)	Court Costs (in Billions)[5]
1979	$.158	$18.21	$.534
1980	$.164	$18.93	$.573
1981	$.162	$18.69	$.585
1982	$.177	$20.43	$.646
1983	$.203	$23.41	$.692
1984	$.215	$24.84	$.750

YEAR	Juror's Forgone Earnings[6] (in Billions)	Total Administrative Costs (in Billions)
1979	$.071	$18.81
1980	$.072	$19.57
1981	$.072	$19.34
1982	$.079	$21.15
1983	$.081	$24.18
1984	$.093	$25.67

1. See Appendix A.7
2. See Appendix A.8
3. See Appendix A.9
4. See Appendix A.10
5. See Appendix A.4
6. See Appendix A.5

TABLE 3.16

METHOD 4 ESTIMATES

ADMINISTRATIVE COST OF THE TORT SYSTEM: GENERAL AND LIMITED JURISDICTION STATE PLUS U.S. DISTRICT CASES ONLY ESTIMATED USING METHOD B*

	Total Number of Court Cases Filed in State General Jurisiction Courts, and U.S. District Courts[1]		Average Number of Hours Per Case2		Total Number of Lawyers Employed By Plaintiff and Defense
YEAR	Gen/Dist.*	Ltd.	General/Dist.	Ltd.	
1979	1679703	175560	68.09	30	2
1980	1567583	203670	68.09	30	2
1981	1440344	233988	68.09	30	2
1982	1495300	243763	68.09	30	2
1983	1551171	251866	68.09	30	2
1984	1609906	261311	68.09	30	2

	Average Billing Rate3	Total Legal Costs of Cases Filed (in Billions)		Legal Costs of Claims Settled Before Filing4 (in Billions)	
YEAR		Gen/Dist.	Ltd.	Gen/Dist.	Ltd.
1979	68.2	$15.60	.718	$2.45	$.256
1980	75.99	$16.22	.929	$2.54	$.297
1981	81.63	$16.01	1.146	$2.51	$.341
1982	85.99	$17.51	1.253	$2.74	$.353
1983	94.96	$20.06	1.435	$3.14	$.367
1984	97.07	$21.28	1.522	$3.34	$.380

	Non-Legal Costs (i.e., expert witnesses, litigant's time, etc.,) in (Billions)		Total Legal Costs in (Billions)	Court Costs (in Billions)5
YEAR	Gen/Dist.	Limited		
1979	$.158	$.007	$19.19	$.587
1980	$.164	$.009	$20.17	$.643
1981	$.162	$.012	$20.18	$.673
1982	$.177	$.013	$22.05	$.743
1983	$.203	$.014	$25.23	$.795
1984	$.215	$.015	$26.75	$.862

	Juror's Forgone Earnings6 (in Billions)	Total Administrative Costs (in Billions)
YEAR		
1979	$.071	$19.84
1980	$.072	$20.88
1981	$.073	$20.92
1982	$.080	$22.87
1983	$.087	$26.10
1984	$.094	$27.70

1) See Appendix A.2
2) See Appendix A.8
3) See Appendix A.9
4) See Appendix A.10
5) See Appendix A.4
6) See Appendix A.5

Figure 3.17

Method 4 Estimate
Administrative Cost of the Tort System:
General Jurisdiction State Plus U.S.
District Cases Only Estimated Using
Method A
(in billions)

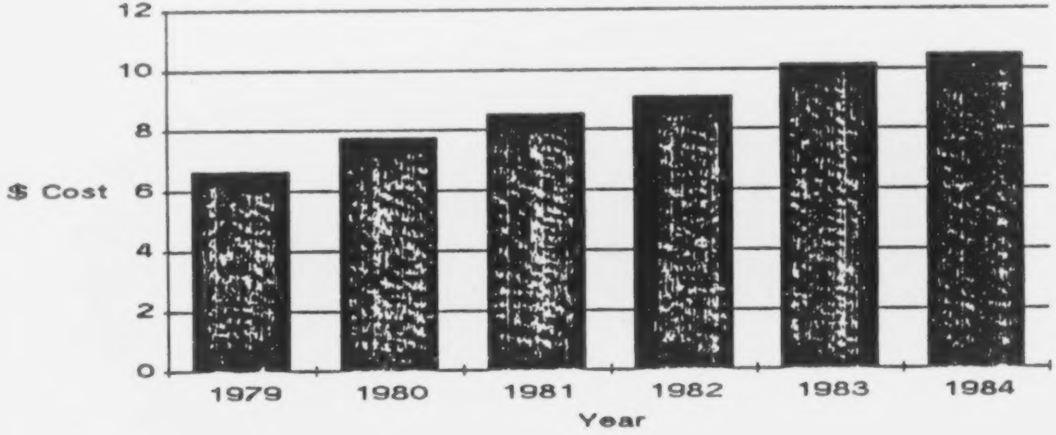


Figure 3.18

Method 4 Estimate
Administrative Cost of the Tort System:
General and Limited Jurisdiction State Plus
U.S. District Cases Estimated Using
Method A
(in billions)

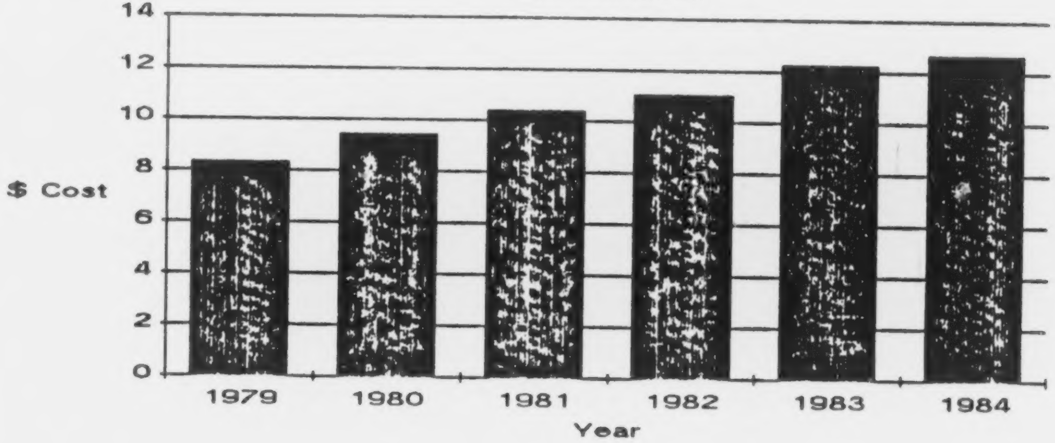


Figure 3.19

Method 4 Estimate
Administrative Cost of the Tort System:
General Jurisdiction State Plus U.S.
District Cases Only Estimated Using
Method B
(in billions)

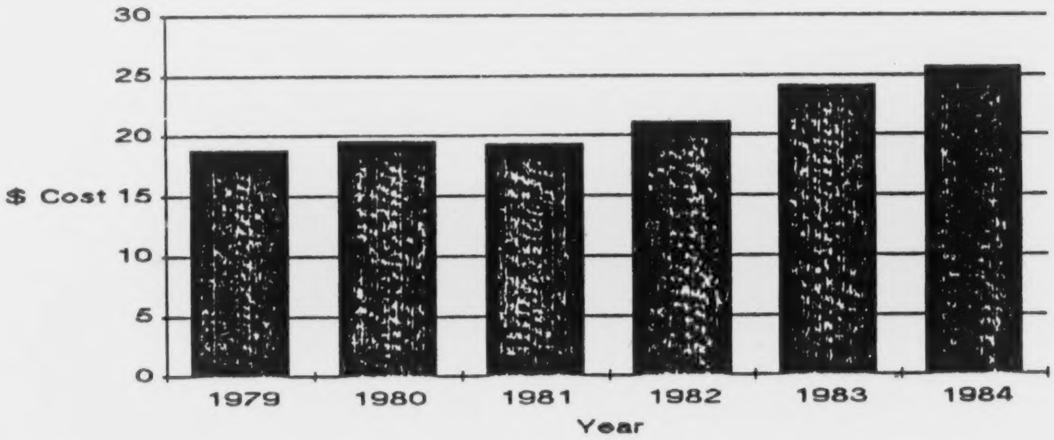
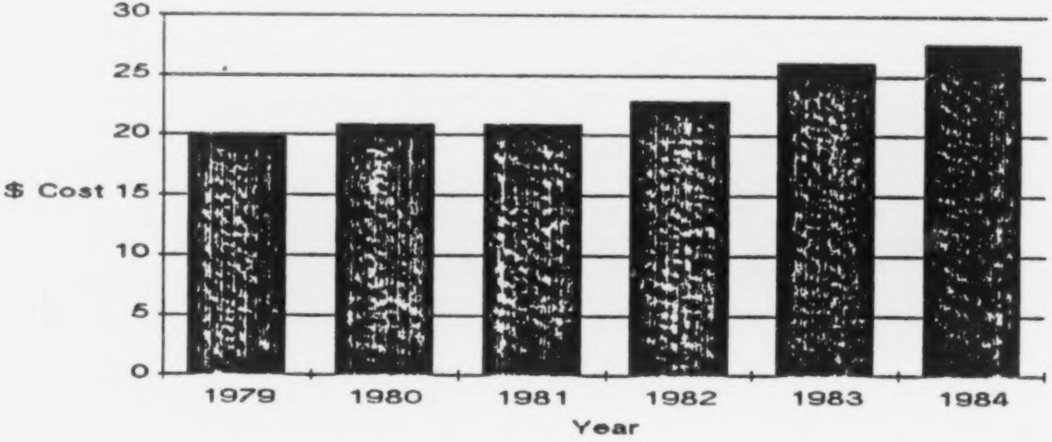


Figure 3.20

Method 4 Estimate
Administrative Cost of the Tort System:
General and Limited Jurisdiction State Plus
U.S. District Cases Estimated Using
Method B
(in billions)



The rates of growth for these estimates are low in comparison to the method 1 data, ranging from a low of 6% to a high of 9%. If this rate of growth continues, we can expect that, by 1989, this cost will be between $16.7 billion and $38 billion, depending on the assumptions one makes about court filings. Using the estimates in Table 3.16, over the next five years the administrative costs of the tort system will be $169.8 billion. When one considers that this is approximately the size of the current United States budget deficit, the magnitude of these costs is clear.

3.8: Sensitivity Analysis:

The assumptions underlying our Method 4 calculations are essentially those underlying our Method 3 calculation (A.9-A.11) plus A.12-A.13:

A.12 (116/857) of all claims lead to the employment of lawyers by plaintiffs but do not lead to case filings.[31]

A.13 In all cases in which lawyers are employed for claims which are settled before case filings, an average of 10.4 hours of legal time is used.[32]

Since our Method 4 calculations are fairly sensitive to assumptions A.12-A.13, we vary each assumption independently to record their impact on the total estimate. Figures 3.21-3.22 demonstrate how the calculation presented in Table 3.19 would change if we assumed that the mean number of hours for these types of cases was either 15.6 hours or 5.2 hours (Figure 3.21) or the fraction of claims which lead to the employment of lawyers but are settled

[31] Assumption based on R. Miller and A. Sarat "Grievances, Claims and Disputes: Assessing the Adversary Culture," in Civil Litigation Research Project, final report, part B, University of Wisconsin Law School, 1983, p: III, 146.

[32] See data from Civil Litigation Research Project, in Appendix A.8.

Figure 3.21

Effects of Changing Assumptions on Mean Number of Legal Hours Spent on Claims Not Filed:
Mean Number of Hours Spent Equal to 1.00, 1.50 and .50 of Estimated Hours
(in billions)

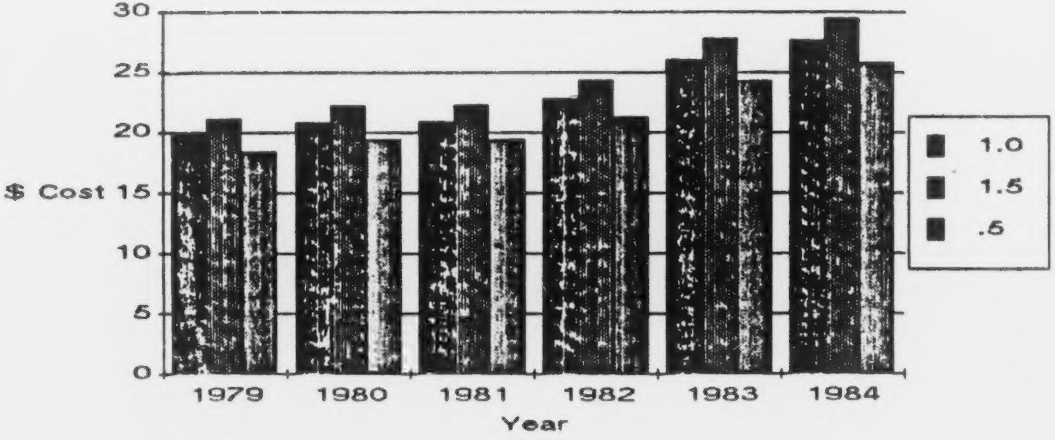
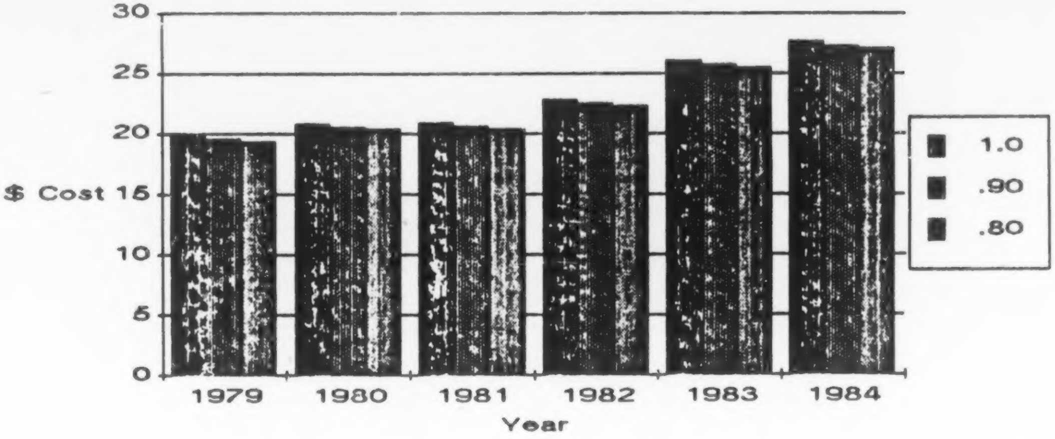


Figure 3.22

Effects of Changing Assumptions on Claims that Employ Lawyers But Do Not Lead to a Court Filing:
Fraction Equal to 1.00, .90 and .80 of Estimated Value of (78/857)
(in billions)



before a case filing was either (70/857) or (62/857), a reduction of 10% and 20% respectively (Figure 3.22). Our total estimates are not greatly affected by these variations, increasing by $1.8 billion when we assume legal time per claim not filed increases from 10.4 to 15.6 hours and decreasing by $1.9 billion when we assume that the legal time for such cases is 5.2 hours.

3.9: Worker's Compensation

If one views our current tort system as only a system of third party liability with court-determined awards, then one can claim that we should have eliminated the administrative cost of workers compensation statutes from our estimates. In Table 3.17 we do this and investigate the effects on the Method 1 and 2 calculations (the only ones in which workers compensation has adjustment expenses occur).

The elimination of workers compensation administrative costs from the system, while reducing its absolute amount, does not reduce the order of magnitude of the estimates. Our Method 3 and 4 calculations would be unchanged, since they only include claims that involve the use of lawyers. Since lawyers play virtually no part in the workers compensation system, its contribution to our Method 3 and 4 estimates is not very significant.

Section 4: Policy Alternatives: No-Fault

The estimates generated in this report, in and of themselves, do not lead to prescriptions concerning whether changes in the present tort system are desirable. However, if we were to contemplate changing our present method of handling torts they would certainly be an important input into that decision. To address this broader question, we would first list the net benefits of the current system (i.e., benefits minus costs) and compare these to the net benefits of another real or hypothetical system. The costs of the present system are obvious enough. First there are the administrative costs estimated

TABLE 3.17
TOTAL ADMINISTRATIVE COST OF THE TORT SYSTEM
WORKER'S COMPENSATION ELIMINATED

METHOD 1

YEAR	Total Admin. Cost of Tort System: General Jurisdiction Cases Only Using Method A	Total Admin. Cost of Tort System: General Plus Limited Jurisdiction Cases Using Method B	Total Admin. Cost of Tort System: General Jurisdiction Cases Only Using Method A	Total Admin. Cost of Tort System: General Plus Limited Jurisdiction Cases Using Method A
1979	6354060800	6444723500	6725741700	6781026200
1980	7076842400	7168731000	7442914900	7515638400
1981	7664897100	7772878300	8009267300	8101573400
1982	8408585300	8524286800	8795088200	8896691600
1983	9176193100	9296856100	9598895100	9707803600
1984	12349164000	12476219000	12815182000	12933085000

METHOD 2

1979	8902344200	8993007000	9274025100	9329309600
1980	9922436200	10014324000	10288508000	10357960000
1981	10651695000	10759676000	10996065000	11084278000
1982	11570949000	11686650000	11957451000	12054557000
1983	12384963000	12505626000	12807665000	12911686000
1984	14887854000	15014909000	15353871000	15466496000

in this report. The remaining costs, however, are more subtle but almost certainly much more substantial. These costs involve the misallocation of resources that are the result of the improper incentives created by our current system. For instance, recent medical malpractice jury awards and the increase in the incidence of such suits have had a chilling effect on medical practitioners. Physicians have begun to abandon whole specialties, such as, obstetrics, as a result of unacceptably high insurance premiums. If the increase in premiums in a medical specialty does not reflect the increased riskiness of such practices but, rather, the increased amount of jury awards which may include large punitive damages (which may not bear a direct relationship to actual damages), then the price signals being sent to physicians do not reflect real social costs. Such inaccurate price signals lead to a misallocation of doctors across fields of specialization. The list of such misallocations is large, but in each case the point is clear: if our current litigation system is not reflecting actual damages in its awards, and if insurance premiums reflect awards and not damages, then the current system is misdirecting our resources.

But the current system cannot be dismissed as being totally ineffectual. It does yield some benefits. These benefits derive from the fact that agents guilty of tortious actions are made to pay for their improper conduct, and this financial accountability creates incentives to take greater care then would be taken if such accountability were absent. Obviously, the optimal system would be one which created incentives to take preventive actions up to the point at which the last dollar spent on accident prevention saved exactly an equal amount in terms of accident avoidance. Some theoretical evidence exists which indicates that, if damages were unambiguously observable, our current system of tort law would be optimal (see Brown (1973) and Shavell

(1980). The problem, of course, is that damages are not unambiguously observable and judges and juries may not be making awards that accurately reflect them (see Ordover (1978, 1981)). Be that as it may, it is still true that the present system does create incentives to take significant levels of care (albeit perhaps too great) and the accidents avoided by this care are a benefit to society.

In order to describe how the calculations made above might be used to judge whether a proposed system of tort reform is beneficial, lets start by making a rather strong assumption that the present system is creating exactly the right signals and hence is creating incentives for care that are optimal. The question is: in such a case could one still argue for tort reform? As we will see the answer to this question may well be yes depending on the size of the administrative costs of the alternative systems. If the current system truly created the proper incentives, then the only cost of the system would be administrative cost. Hence, consider a change in the current sytem of liability from a litigation based judicial award system to a no-fault system. If the current system truly were creating the right incentives, then we can expect a no fault system to generate more tortious conduct and this would be a loss. The argument here is that since people are not exposed to the correct type of financial loss under a no-fault system, their incentives to avoid tortious conduct are diminished. Still, there is a benefit to moving to a no-fault system. The benefit derives from the fact that no-fault reduces the litigation costs which currently constitute about 97% of all administrative costs. Hence in contemplating a change to no-fault, we must weight the administrative cost savings achieved with the incremental loss that result because of a higher incidence of accidents.

To demonstrate the magnitude of the problem consider our Method 1 1984 estimates which estimate the administrative costs of the tort system at approximately $15 Billion. Since losses paid and unpaid in 1984 were $58 billion this figure represents approximately 26% of the total losses. If a move to a no-fault system were to reduce administrative costs by 25% then $3.75 billion would be saved. Hence even if more accidents occurred because of the weaker incentives provided, if these costs did not exceed $3.75 billion no-fault would be beneficial. Evidence from New Zealand, where no-fault automobile insurance has a rich history, indicates that the volume of accidents did not increase significantly at all after it was initiated. Hence, with no change in accidents the no fault tort reform would be unambiguously beneficial. Further, if a no-fault system were complete, all legal adjustment expenses would be saved. Since legal expenses constitute 90% of loss adjustment expenses, we would expect to save $13.5 Billion from such a radical change. Hence, if the social cost of accidents does not increase by more than that amount, such a change would be desirable.

If we relax our extreme assumption about the optimality of the current system, then proposed changes are more likely to be beneficial since society will save currently wasted resources as well. However one wants to proceed it is still clear that with administrative costs in our study running between 26% and 46% of total losses, there must exist a variety of reforms of the tort system which, if they could lower our administrative costs, would be worthwhile.

Section 5: Conclusion

In this report we have estimated the administrative costs of the tort system using four different methods and four different assumptions within each method. Two of the methods relied heavily upon the allocated and unallocated loss adjustment expense data furnished in Schedule P of A.M. Best's Aggregates and Averages while the other two relied heavily upon court case load statistics to estimatethe number of tort cases filed and then estimated the legal costs of resolvng these cases. To a large extent our estimates were remarkably consistent. For instance in 1984 11 of our 16 estimates were in the $10 billion to $17 billion range, four were between $22 and $27 billion, and one was $9.05 billion.

The highest estimate was so for an obvious reason. First, this estimate was calculated using our Method 4. This method, which relies on caseload statistics, is extremely sensitive to the number of tort cases estimated to be filed. And the method of estimation used to construct these estimates generates a substantially higher number of filed cases than other methods. Second, in this estimate we included costs that were excluded in our related Method 3 estimate. For instance, this estimate includes the cost of all claims made which lead to the employment of lawyers by plaintiffs but not to a case filing. It also includes an estimate of non-legal litigation costs. Together these costs were almost $3 billion and these amounts explain a large part of the difference. Finally, there do not exist standard procedures by which firms decide which loss adjustment expenes are allocated and which are unallocated. Hence, the allocated loss adjustment data found in A.M. Best's Aggregates and Averages may be arbitrary and underestimate the total.

We expect that the most reliable estimates of the cost of the tort system as currently constituted which includes all lines of tort activity listed in Schedule P of A.M. Best's Aggregates and Averages, lies closer to the mid-point of our estimate range than its extremes. From the data generated here one expects a cost of between $15 and $20 billion to best represent the total amount of resources being allocated each year to adjust and litigate the various claims made by injured parties. Such a cost is considerable when one thinks that total premiums earned in 1984 by domestic non-captive insurance companies was only $76 Billion and that total losses paid and unpaid were only $58 Billion. In short, between 19.7% and 26% of all premiums earned were spent by plaintiffs and defendants to resolve disputes arising from tortious conduct. Also for every dollar paid in awards and setlements between 25 cents and 34 cents is paid just to administer the system.

One alarming fact that arises from these estimates is that the rate of increase of these administrative costs has risen suddenly since 1983 in eight of our estimates (our Methods 1 and 2 estimates), rising from an average of 9.9% in the five previous years to 35% in 1984. In our other two estimation techniques, this rate of growth was more erratic, averaging about 8.7% but fluctuating widely. These increases portend trouble since if they are not checked we can expect an explosion in the administrative costs of the system in the years ahead. If current rates of growth continue, we can expect by 1990 to be spending between $31 and $38 billion a year simply to administer our tort system.

As stated in Section 4, these estimates do not carry any policy prescriptions with them. Whether we would want to switch to a different system of tort liability in this country is a calculation that must be made by comparing the net benefits of the current system to a proposed alternative. However, what our estimates do say is that there certainly is a reason to look for such alternatives because we are spending so much simply to administer the present system and a less administratively expensive system, even if it provided weaker incentives for accident avoidance, might still be beneficial.

Finally, it is important to note once more that we did not endeavor to present one number which would unambiguously estimate the cost of the tort system. Rather we presented four methods which generated 16 separate estimates. All of these methods involved the use of different assumptions and we tried to investigate the consequences of these assumptions, for our estimates. If one accepts our methods but not our assumptions we would welcome the opportunity to employ alternate assumptions and explore their consequences. That is the point of this report.

APPENDIX A.1

Table A.1.1:

Estimated Number of Tort Cases Filed (Commenced), U.S. District and State Trial Courts, 1979-1984. (Method A)[1]

	1979	1980	1981
AVERAGE TORTS FILED per 100,000 POPULATION			
General Jurisdiction State Trial Courts			
Weighted:	250	258	261
Unweighted:	214	215	218
Limited Jurisdiction State Trial Courts			
Weighted:	128	113	119
Unweighted:	87	83	90
U.S. POPULATION (x 10^5):	2250.55	2277.38	2300.19
ESTIMATED TORTS FILED			
General Jurisdiction State Trial Courts			
Weighted:	562,638	587,564	600,350
Unweighted:	481,618	489,637	501,441
Limited Jurisdiction State Trial Courts			
Weighted:	288,070	257,344	273,723
Unweighted:	195,798	189,023	207,017
TORTS COMMENCED, U.S. DISTRICT COURTS:	30,503	33,853	33,456
TOTAL TORTS FILED (Commenced)			
Weighted:	881,211	878,761	907,529
Unweighted:	707,919	712,513	741,914

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[1] Using this method, the total number of tort cases is calculated as follows: For approximately twenty states, torts filed @ 100,000 population in general jurisdiction trial courts is reported in the State Court Caseload Statistics, published by the National Center for State Courts. The analogous figure for limited jurisdiction state trial courts is reported by roughly ten states, including those for which torts are tried exclusively in general jurisdiction state trial courts. (Hence, for these states, torts filed @ 100,000 population in limited jurisdiction trial courts = 0.) This figure was averaged over reporting states in two ways: The first average was weighted by population; the second was a simple average. These averages were then applied to total U.S. population for the same year, yielding an estimate of total torts filed at the state level in general and limited jurisdiction courts, respectively. Finally, torts commenced at the U.S. district court level were added to torts filed at the state level to obtain our estimate of total torts filed.

Table A.1.1: (continued)

Estimated Number of Tort Cases Filed (Commenced), U.S. District and State Trial Courts, 1979-1984. (Method A)

	1982[2]	1983[2]	1984[2]
AVERAGE TORTS FILED per 100,000 POPULATION			
General Jurisdiction State Trial Courts			
Weighted	261	261	261
Unweighted:	218	218	218
Limited Jurisdiction State Trial Courts			
Weighted:	119	119	119
Unweighted:	90	90	90
U.S. POPULATION (x 105):	2323.09	2344.96	2366.34
ESTIMATED TORTS FILED			
General Jurisdiction State Trial Courts			
Weighted:	606,326	612,035	617,615
Unweighted:	506,434	511,201	515,862
Limited Jurisdiction State Trial Courts			
Weighted:	276,448	279,050	281,594
Unweighted:	209,078	211,046	212,971
TORTS COMMENCED, U.S. DISTRICT COURTS:	35,654	36,788	38,734
TOTAL TORTS FILED (Commenced)			
Weighted:	918,428	927,873	937,943
Unweighted:	751,166	759,035	767,567

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[2] For 1982, 1983, and 1984, average torts filed @ 100,000 population in 1981 - the most recent data available - were applied to current population figures to arrive at an estimate of torts filed in both general and limited jurisdiction state trial courts.

Table A.1.2.1

Torts Filed by State (per 100,000 population) - 1979.

State	Gen Juris Pop. Wt.	Filings Gen. Juris.	Pop.Wt.x Gn.Jrs.	Ltd Juris Pop. Wt.	Filings Ltd. Juris.	Pop.Wt.x Ltd.Jur.
Alaska	.0034	214	0.7276	.0062	114	0.7068
California	.1941	400	77.6400			
Colorado	.0238	136	3.237			
Delaware						
Florida	.0790	215	16.985			
Hawaii	.0079	139	1.098	.0146	97	1.416
Idaho	.0078	181	1.412	.0144	0	0
Kansas	.0196	214	4.194	.0361	0	0
Maine	.0094	188	1.767			
Maryland	.0352	185	6.512			
Michigan	.0772	165	12.738			
New Jersey	.0615	606	37.269	.1134	246	27.896
New York	.1472	202	29.734	.2713	183	49.648
North Dakota	.0054	110	0.594			
Ohio	.0901	198	17.840	.1662	181	30.082
Oklahoma	.0248	263	6.522	.0457	0	0
Puerto Rico	.0264	113	2.983	.0487	65	3.166
Tennessee	.0378	235	8.883	.0697	0	0
Texas	.1159	122	14.140	.2137	71	15.173
Utah						
Washington	.0335	174	5.829			
Total:	1.0	4,060	250.10	1.0	957	128.09

Table A.1.2.2

Torts Filed by State (per 100,000 population) - 1980.

State	Gen Juris Pop. Wt.	Filings Gen. Juris.	Pop.Wt.x Gn.Jrs.	Ltd Juris Pop. Wt.	Filings Ltd. Juris.	Pop.Wt.x Ltd.Jur.
Alaska	.0035	194	0.679	.0061	126	0.7686
California	.2074	351	72.797			
Colorado	.0254	155	3.937			
Delaware						
Florida	.0853	217	18.510			
Hawaii	.0085	145	1.233	.0147	94	1.382
Idaho	.0083	189	1.569	.0144	0	0
Kansas	.0207	230	4.761	.0361	0	0
Maine	.0099	184	1.822			
Maryland	.0370	213	7.881			
Michigan						
Montana	.0069	198	1.366			
New Jersey	.0645	653	42.119	.1125	256	28.800
New York	.1538	193	29.683	.2683	124	33.269
North Dakota	.0057	118	0.6726			
Ohio	.0946	198	18.731	.1650	185	30.525
Oklahoma	.0265	265	7.023	.0462	0	0
Puerto Rico	.0281	126	3.541	.0490	58	2.842
Tennessee	.0402	244	9.809	.0701	0	0
Texas	.1247	200	24.940	.2174	70	15.218
Utah	.0128	51	0.653			
Washington	.0362	173	6.263			
Total:	1.0	4,297	257.99	1.0	913	112.8

Table A.1.2.3

Torts Filed by State (per 100,000 population) - 1981.

State	Ltd Juris Pop. Wt.	Filings Gen. Juris.	Pop.Wt.x Gn.Jrs.	Ltd Juris Pop. Wt.	Filings Ltd. Juris.	Pop.Wt.x Ltd.Jur.
Alaska	.0037	215	0.7955	.0085	134	1.139
California	.2170	335	72.695			
Colorado	.0266	172	4.575			
Delaware						
Florida	.0913	207	18.899			
Hawaii	.0088	*145	1.276	.0203	106	2.152
Idaho	.0086	182	1.565	.0198	0	0
Kansas	.0214	190	4.066	.0493	0	0
Maine	.0102	169	1.724			
Maryland	.0382	*213	8.137			
Michigan						
Montana	.0071	185	1.314			
New Jersey	.0664	*653	43.359	.1532	233	35.696
New York	.1579	223	35.212	.3642	98	35.692
North Dakota	.0059	78	0.460			
Ohio	.0967	203	19.630	.2230	183	40.809
Oklahoma						
Puerto Rico	.0287	118	3.387	.0661	57	3.768
Tennessee	.0414	261	10.805	.0955	0	0
Texas	.1323	195	25.799			
Utah						
Washington	.0378	188	7.106			
Total:	1.0	3,932	260.805	1.0	811	119.26

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* Indicates 1980 data were used because 1981 data were not available.

APPENDIX A.2

Table A.2.1

Estimated Number of Tort Cases Filed (Commenced), U.S. District and State Trial Courts, 1979-1984. (Method B)[1]

	1977	1978	1979	1980
CIVIL CASES FILED, STATE TRIAL COURTS				
Est. # Civil Cases Filed Nationwide, All State Trial Courts:[2,5]	12,800,000	13,000,000	14,000,000	14,600,000
Est. % Filed in General[3] Jurisdiction State Trial Courts:	62%	62%	62%	55%
Est. # Civil Cases Filed in General Jurisdiction State Trial Courts:	7,936,000	8,060,000	8,680,000	8,030,000
Est. # Civil Cases Filed in Limited Jurisdiction State Trial Court:	4,864,000	4,940,000	5,320,000	6,570,000
COMPOSITION OF CIVIL CASES FILED, STATE TRIAL COURTS				
Avg., Torts as % All Civil Cases Filed in General Jurisdction State Trial Courts				
Weighted:[4]	16.1%	18.9%	19.0%	19.1%
Unweighted:	12.3	12.8	13.3	12.5
Avg., Torts as % All Civil Cases Filed in Limited Jurisdiction State Trial Courts				
Weighted:[4]	5.3%	5.3%	5.0%	4.7%
Unweighted:	5.4	5.1	4.9	4.7
TORT CASES FILED, STATE TRIAL COURTS				
General Jurisdiction				
Weighted:[4]	1,277,696	1,523,340	1,649,200	1,533,730
Unweighted:	976,128	1,031,680	1,154,440	1,003,750
Limited Jurisdiction				
Weighted:[4]	257,792	261,820	260,100	203,790
Unweighted:	262,656	251,940	260,680	308,790
TORT CASES COMMENCED, U.S. DISTRICT COURTS:	26,161	27,473	30,503	33,853
TOTAL TORT CASES FILED, NATIONWIDE				
Weighted:[4]	1,561,649	1,812,633	1,945,703	1,876,373
Unweighted:	1,264,945	1,311,093	1,445,623	1,346,393

Table A.2.1 (continued)
Estimated Number of Tort Cases Filed (Commenced), U.S. District and State Trial Courts, 1979-1984. (Method B)[1]

	1981	1982	1983	1984
CIVIL CASES FILED, STATE TRIAL COURTS				
Est. # Civil Cases Filed Nationwide, All State Trial Courts:[2,5]	14,800,000	15,355,000	15,930,812	16,528,217
Est. % Filed in General Jurisdiction State Trial Courts:	49%	49%	49%	49%
Est. # Civil Cases Filed in General Jurisdiction State Trial Courts:	7,252,000	7,523,950	7,806,098	8,098,826
Est. # Civil Cases Filed in Limited Jurisdiction State Trial Court:	7,548,000	7,831,050	8,124,715	8,429,391
COMPOSITION OF CIVIL CASES FILED, STATE TRIAL COURTS				
Avg., Torts as % All Civil Cases Filed in General Jurisdction State Trial Courts				
Weighted:[4]	19.4%	19.4%	19.4%	19.4%
Unweighted:	13.3	13.3	13.3	13.3
Avg., Torts as % All Civil Cases Filed in Limited Jurisdiction State Trial Courts				
Weighted:[4]	5.1%	5.1%	5.1%	5.1%
Unweighted:	5.1	5.1	5.1	5.1
TORT CASES FILED, STATE TRIAL COURTS				
General Jurisdiction				
Weighted:[4]	1,406,888	1,459,646	1,514,383	1,571,172
Unweighted:	964,516	1,000,685	1,038,211	1,077,144
Limited Jurisdiction				
Weighted:[4]	233,988	242,763	251,866	261,388
Unweighted:	384,948	399,384	414,360	429,899
TORT CASES COMMENCED, U.S. DISTRICT COURTS:	33,456	35,654	36,788	38,734
TOTAL TORT CASES FILED, NATIONWIDE				
Weighted:[4]	1,825,292	1,894,684	1,965,531	2,039,805
Unweighted:	1,382,920	1,435,723	1,489,359	1,545,777

Table A.2.2

Torts as a % of Total Civil Cases Filed, Limited Jurisdiction State Trial Courts.

State	Torts Filed, Ltd. Juris.	Ttl.Cvl. Filed Ltd.Juris.	Torts,% Ttl Cvl Filed, Ltd.Juris.	St. Pop. (000's)	Weights	Wts.x Torts as % of Ttl. Cvl.
			1979			
Alaska	457	14,852	3.1%	402	.0174	0.0539
Hawaii	923	12,369	7.5	950	.0410	0.3075
Idaho	0		0	933	.0403	0
Kansas	0		0	2,374	.1025	0
New Jersey	18,123	na	.na			.na
New York	32,175	na	.na			.na
Ohio	19,599	381,906	5.1	10,799	.4664	2.3786
Puerto Rico	2045	51,262	4.0	3,165	.1367	0.5468
Texas	9853	na	.na			.na
Tennessee	0		0	4,533	.1958	0
Total:				23,156	1.0	3.287%
			1980			
Alaska	504	14,172	3.6%	400	.0172	0.0619
Hawaii	904	13,598	6.6	965	.0415	0.2739
Idaho	0		0	944	.0406	0
Kansas	0		0	2363	.1016	0
New Jersey	18,849	na	.na			.na
New York	21,693	na	.na			.na
Ohio	19,962	398,913	5.0	10,797	.4640	2.32
Puerto Rico	1,861	54,818	3.4	3,207	.1378	0.4685
Texas	9,988	na	.na			.na
Tennessee	0		0	4,591	.1973	0
Total:				23,267	1.0	3.12%
			1981			
Alaska	552	13,588	4.1%	412	.0205	0.0841
Hawaii	1,037	16,907	6.1	981	.0487	0.2971
Idaho	0		0	959	.0476	0
Kansas	0		0	2383	.1184	0
New Jersey	17,215	na	.na			
New York	17,302	na	.na			
Ohio	19,697	391,297	5.0	10,780	.5354	2.677
Puerto Rico	1,813	na	.na			
Texas						
Tennessee	0		0	4,618	.2294	0
Total:				20,133	1.0	3.0582

Source: State Court Caseload Statistics, Nat'l Ctr State Courts, Wlmsbg,Va; var. is

Table A.2.3.1

Ratio, Civil Cases Filed in General Jurisdiction State Trial Courts to Civil Cases Filed in All State Trial Courts, 1979-1981.*

Year	# States Reporting	Civil Cases Filed, Gen. Juris. Courts	Civil Cases Filed, All State Trial Courts	Ratio, Civil Cases Filed in Gen. Juris. to CivilCases Filed, All State Trial Crts.
1979	(25)	3,529,241	5,707,552	0.62
1980	(28)	4,615,254	8,431,078	0.55
1981	(23)	3,223,137	6,570,403	0.49

Source: State Court Caseload Statistics, National Center for State Courts, Williamsburg, Virginia. Various issues.

* State totals were included in the published table used to derive the ratio of civil cases filed in general jurisdiction state trial courts to such cases filed in all state trial courts only when all courts with civil jurisdiction within that state reported either complete filings and/or dispositions.

Table A.2.4.1

Average, Torts as % Total Civil Cases Filed in
General Jurisdiction State Trial Courts, 1979.

	Torts as % Total Civil	State Population 1979 (000's)	Weights	Weights x Torts as % Total Civil Filed
Alaska	7.8%	402	.0034	.0265
California	16.0	23,255	.1941	3.1056
Colorado	3.9	2,849	.0238	.0928
Delaware				
Florida	7.9	9,471	.0790	.6241
Hawaii	5.8	950	.0079	.0458
Idaho	3.2	933	.0078	.0250
Kansas	4.8	2,347	.0196	.0941
Maine	27.3	1,125	.0094	.2566
Maryland	9.6	4,233	.0352	.3379
Michigan	8.0	9,249	.0772	.6176
New Jersey	57.7	7,373	.0615	3.5486
New York	54.1	17,634	.1472	7.9635
North Dakota	6.5	652	.0054	.0351
Ohio	8.3	10,799	.0901	.7478
Oklahoma	4.0	2,970	.0248	.0992
Puerto Rico	3.8	3,165	.0264	.1003
Tennessee	11.8	4,533	.0378	.4460
Texas	5.4	13,887	.1159	.6259
Utah				
Washington	6.2	4,013	.0335	.2077
Totals:	252.1	119,830	1.0	19.0%

Unweighted average, torts as a % total civil cases filed in general jurisdiction state trial courts = 252.1/19 = 13.3%.

Weighted Average, torts a % total civil cases filed in general jurisdiction state trial courts = sum of column 4 = 19.0%.

Table A.2.4.2

Average, Torts as % Total Civil Cases Filed in General Jurisdiction State Trial Courts, 1980.

	Torts as % Total Civil	State Population 1979 (000's)	Weights	Weights x Torts as % Total Civil Filed
Alaska	7.4%	400	.0035	0.0259
California	15.2	23,669	.2074	3.1520
Colorado	4.2	2,899	.0254	0.1067
Delaware				
Florida	7.7	9,740	.0853	0.6568
Hawaii	5.6	965	.0085	0.0476
Idaho	3.4	944	.0083	0.0282
Kansas	4.6	2,363	.0207	0.0952
Maine	24.1	1,125	.0099	0.2386
Maryland	10.4	4,218	.0370	0.3848
Michigan				
Montana	5.7	787	.0069	0.0393
New Jersey	59.7	7,364	.0645	3.8506
New York	49.8	17,557	.1538	7.6590
North Dakota	6.6	653	.0057	0.0376
Ohio	8.1	10,797	.0946	0.7663
Oklahoma	4.0	3,025	.0265	0.1060
Puerto Rico	4.0	3,207	.0281	0.1124
Tennessee	11.9	4,591	.0402	0.4784
Texas	8.5	14,228	.1247	1.0599
Utah	2.4	1,461	.0128	0.0307
Washington	6.1	4,130	.0362	0.2208
Totals:	249.4	114,123	1.0	19.0968

Table A.2.4.3

Average, Torts as % Total Civil Cases Filed in General Jurisdiction State Trial Courts, 1981.

	Torts as % Total Civil*	State Population 1981 (000's)	Weights	Weights x Torts as % Total Civil Filed
Alaska	7.7%	412	.0037	.0285
California	14.4	24,194	.2170	3.1248
Colorado	5.2	2,965	.0266	0.1383
Delaware				
Florida	7.2	10,183	.0193	0.6574
Hawaii	5.6	981	.0088	0.0493
Idaho	3.3	959	.0086	0.0284
Kansas	3.8	2,383	.0214	0.0813
Maine	23.7	1,133	.0102	0.2417
Maryland	10.4	4,263	.0382	0.3973
Michigan				
Montana	5.1	794	.0071	0.0362
New Jersey	59.7	7,404	.0664	3.9641
New York	49.8	17,603	.1579	7.8634
North Dakota	4.1	658	.0059	0.0242
Ohio	8.3	10,780	.0967	0.8026
Oklahoma				
Puerto Rico	4.0	3,195	.0287	0.1148
Tennessee	12.7	4,618	.0414	0.5258
Texas	8.3	14,752	.1323	1.0981
Utah				
Washington	6.8	4,216	.0378	0.2570
Totals:	240.1	111,493	1.0	19.4332

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* For a number of states (Hawaii, Maryland, New Jersey, New York and Puerto Rico), 1981 data are not available. For these states, torts as a % of all civil cases filed in general jurisdiction state trial courts in 1981 was assumed to be equal to the same ratio in 1980.

Unweighted average, torts as a % total civil cases filed in general jurisdictio state trial courts = 240.1/18 = 13.3%.

Weighted Average, torts a % total civil cases filed in general jurisdiction state trial courts, 1981 = 19.4%.

FOOTNOTES FOR APPENDIX A.2

Sources: State Court Caseload Statistics, National Center for State Courts, Williamsburg, Virginia, various issues; Federal Judicial Workload Statistics, Administrative Office of the U.S. Courts, Washington, D.C., various issues.

[1] Employing this method, the total number of tort cases filed is estimated as follows: The National Center for State Courts publishes an estimated total number of civil cases filed in state trial courts nationwide. This total was broken down into civil cases filed in general and limited jurisdiction state trial courts by applying the ratio of general civil cases to total civil cases, and limited jurisdiction civil cases to total civil cases, as calculated from data provided by over 20 states in 1979, 1980 and 1981. The average ratio of torts to civil cases filed in general jurisdiction state trial courts, calculated from data provided by nineteen states, was applied to the estimated number of civil cases filed in general jurisdiction state trial courts to obtain the number of tort cases filed in general jurisdiction state trial courts. An analogous procedure was used in calculating the number of tort cases filed in limited jurisdiction state trial courts, albeit a smaller set of states — approximately eight – provided the requisite breakdown of data. Finally, the sum of torts filed in general and limited jurisdiction state trial courts and torts commenced at the federal level constituted our estimate of total torts.

[2] As estimated by the National Center for State Courts, using a least squares regression technique.

[3] As of 1979, the National Center for State Courts included state totals in the relevant table only when all courts with civil jurisdiction within that state reported either complete filings amd/or dispositions. This criterion is a prerequisite for calculating accurate ratios. Hence, only 1979-1981 data were used for this purpose. For earlier and later years, data for the closest year were used, because the ratio of civil cases filed in general jurisdiction to all state trial courts showed a steady decline over the three-year period.

[4] Weighted by state population, based on 19 reporting states in the case of general jurisdiction, and 8 in the case of limited jurisdiction.

[5] State court caseload data are published with a 4-year lag. Consequently, 1981 data are the latest available. For 1982, 1983 and 1984, the following modifications in methodology were employed: An estimate of total civil cases filed in state trial courts nationwide was calculated by applying the average annual percentage change in this figure between 1977 and 1981 (3.75%) to 1982 and subsequent estimates. The ratio of civil cases filed in general jurisdiction and limited jurisdiction state trial courts to such cases filed in all state trial courts in 1981 respectively, and the average of torts as a percent of all civil cases in each jurisdiction in 1981, were assumed to hold during 1982-1984 as well. The implication of this last assumption is that each of these subcategories of civil cases grew at the same rate as all civil cases filed in state trial courts.

APPENDIX A.3

Table A.3.1

Estimated Number of Tort Cases Filed (Commenced),
U.S. District and State Trial Courts, 1976-1984. (Method C)[*]

	1976[**]	1977	1978	1979	1980	1981	1982	1983	1984
Number of Tort Cases Filed									
U.S. District Courts:	26,022	26,161	27,473	30,503	33,853	33,456	35,654	36,788	38,734
State Trial Courts (estimated):	1,821,540	1,831,270	1,923,110	2,135,210	2,369,710	2,341,920	2,495,780	2,575,160	2,711,380
Total	1,847,562	1,857,431	1,950,853	2,165,713	2,403,563	2,375,376	2,531,434	2,611,948	2,750,114

Source: Federal Judicial Workload Statistics, Administrative Office of the U.S. Courts, Washington D.C., various issues.

[*] Employing this method, the number of tort cases filed at the state trial court level is obtained by multiplying the number of such cases commenced in U.S. district courts by a factor of 70. According to Lieberman (1982), for every civil case commenced at the federal level, there are between 70 and 100 such cases filed at the state level. We assume the same ratio holds for torts, a component of civil cases.

[**] The Administrative Office of the U.S. Courts began publishing cases commenced in U.S. district courts on a calendar year basis in 1977. Consequently, the figure recorded above for tort cases commenced in U.S. district courts in 1976 is annualized on the basis of January to June data.

Appendix A.4 : Estimation of Court Costs

As mentioned in the text, we employ Kakalik's method of estimating the court costs associated with tort cases filed. Estimates were made by multiplying the case-related judge work minutes per case filed or per activity times the FY 1982 government expenditure per case-related judge minute. Kakalik used data on only three states; Florida, California and Washington and extrapolated from this three-state sample. For states, depending on the state and category of tort case, average judge time ranged from 74 to 139 minutes.[1] For U.S. District courts the average was higher ranging from 120 to 446.[2] In 1982, expenditure per case-related judge work-minute ranged from $3.76 to $5.23 for the three states in the sample and was $9.41 for U.S. District Courts.[3] Kakalik's final estimates of the court costs per tort case are presented in his table A.4.2. Since the estimates for the states range from about 300 to about 500, Kakalik (and we as well) use $400 per case filed in State Courts as an average figure for 1982, and $1740 for cases filed in District Courts. To estimate these costs in constant dollars they were deflated using the Consumer Price Index as reported in the Economic Report of the President February 1985, p 284. These estimates for the other years of our study are presented below:

[1] See Kakalik (1982), p. xii)
[2] See Kakalik (1982, p. xii)
[3] See Kakalik (1982, p. xv)

Table A.4.1

	U.S. District Court Costs	State Court Costs
1979	$1308	$300
1980	$1485	$341
1981	$1639	$377
1982	$1740	$400
1983	$1795	$412
1984	$1872	$430

These figures are then merely multiplied by the number of tort cases filed in any given year to generate our total court cost figure. ((See appendices A.1 - A.3 for court filings estimates).

Table A.4.2[4]

Summary of FY 1982 Estimated Average Government Expenditure per Tort Case Filed in Various Courts

Court and Type of Tort Case	Average Expenditure per Case Filed	
	Using the State's Average State-Judge Salaries	Using National Average State-Judge Salaries[a]
California Superior Court		
State excluding Los Angeles	$511	$372
Los Angeles	383	279
Florida Circuit Court		
Auto negligence	331	330
Other negligence	466	450
Washington Superior Court	525	536
U.S. District Court		
Motor vehicle personal injury	N.A.	1506
Other personal injury	N.A.	1750
Airplane personal injury	N.A.	4197
Marine personal injury	N.A.	1562
Torts to land	N.A.	1995
Other personal property damage	N.A.	1129
Assault, libel, and slander	N.A.	2823
Federal employers' liability	N.A.	1402
All U.S. District Court[b]	N.A.	1740

SOURCES: Tables 4.1-4.4 Salary data from Survey of Judicial Salaries, National Center for State Courts, Williamsburg, Virginia, Vol. 7, No. 2, 1981.

NOTES: Figures were calculated using FY 1982 expenditures per minute, and time data from most recent year with "total time" data available. N.A. = not available.

[a] Calculated by multiplying the average expenditure per case filed, using the individual state's average salary times the ratio of the U.S. average state general trial court judge's salary ($45,633 in FY 1982) to the individual state's average general trial court judge's salary.

[b] Average weighted by number of cases of each type filed.

4 Kakalik's (1982) table S.7, p. xx)

Appendix A.5: Estimation of Juror Forgone Income

In all calculations made juror forgone income was determined in an identical manner.

Juror forgone income: = (number of tort cases filed)

x (fraction of filed cases actually tried by jury)

x (number of jurors)

x (number of hours of work lost per day)

x (number of days per jury trial)

x (Forgone Income)

The number of tort cases filed varied depending on the the methods used and are described in Appendices A.1 - A.3. The fraction of cases filed that proceed to a jury trial is estimated using state caseload statistic data and is estimated below for state general and limited jurisdiction cases in the years 1979, 1980 and 1981.

Table A.5.1

Jury Trial As A Percent of Tort Cases Disposed,
State Trial Courts, 1979-1981

Jurisdiction	General Jurisdiction			Limited		
	1979	1980	1981	1979	1980	1981
California	NA	NA	3%	NA	NA	NA
Florida	NA	NA	7%	NA	NA	NA
Hawaii	4%	4%	4%	NA	NA	NA
Michigan	4%	3%	NA	NA	NA	NA
New Jersey	6%	6%	5%	2%	1%	1%
Ohio	4%	4%	4%	<1%	1%	1%
Texas	2%	2%	4%	2%	2%	2%
Unweighted Avgerage:	4%	3.8%	4.5%	1.5%	1.3%	1.3%

Unweighted Average Averaged Over 3-Year Period:

General Jurisdiction: 4.1%

Limited Jurisdiction: 1.4%

The number of days per trial was estimated using data reported in the Civil Litigation Research Project study by Terence Dunsworth (1982) and data reported by Kakalik (1982). Kakalik records the number of minutes a judge spends on a typical jury trial of a tort case in three states; California, Florida and Washington. If we assume that judge minutes per jury trial are equal to a juror's time spent there, then, on average, according to Kakalik's data, 18.7 hours were occupied by a typical tort trial in these states or 2.33 days. Clearly juror time may be greater due to the time jurors spend at the court house waiting to be chosen for a trial. Dunsworth estimates a typical trial in Civil Court lasted 5 days using the Civil Litigation Research Project data.[5]

For purposes of our calculations we estimated the length of juror involvement in a typical tort case as 3.5 days--a figure that includes both time served during a trial and waiting to be selected. We assumed that a jury was composed of six people serving 8 hours a day. Finally, forgone income was calculated using mean wage and salary data for workers in the United States as cited in the 1984 and 1985 Economic Report of the President[6]. These statistics were used as opposed to income data since non-labor income is not forgone because of jury service. Hence, the opportunity cost of a juror is more clearly reflected in mean wages forgone. These estimates are presented below.

5 Dunsworth, Terence, "The Institutional Cost of Civil Disputes," Civil Litigation Research Project: Final Report Part B, University of Wisconsin Law School, P. II-21.

6 Economic Report of the President, Government Printing Office, Washington D.C., 1984, p. 244 (for wage data) and p. 256 for employment data.

Table A.5.2
Average Hourly Wages Forgone by Jurors[7]

Year	1 Total Wages and Salaries Paid (in Billions)	2 Employment	3 Mean Wages and Salary	4 Mean Hourly Wages and Salaries (column 3/2000)
1979	$1,237	98,824,000	$ 12,521	$ 6.26
1980	$1,306	99,303,000	$ 13,661	$ 6.83
1981	$1,493	100,397,000	$ 14,873	$ 7.43
1982	$1,568	99,526,000	$ 15,756	$ 7.87
1983	$1,658	100,834,900	$ 16,502	$ 8.25
1984	$1,803	105,005,000	$ 17,177	$ 8.58

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[7] All Data taken from Economic Report of the President 1984 ,p. 244 and 256, and 1985, Tables B-21 and B-30.

Appendix A.6: Estimation of the Size of the Captive and Self-Insureds Commercial Loss Adjustment Expenses for Commercial Liability Lines

A study by Conning and Company (1980) estimates that the real commercial market was 22% greater in 1979 than the commercial market as traditionally measured. The source of the underestimate involves exclusion of captive insurers and self-insurers from the calculations. The Conning and Company study estimated this market in 1979 and predicted its behavior into 1984. According to their estimates the commercial market (premiums written) including fire, allied lines, commercial multiple peril, medical malpractice, miscellaneous liability, commercial auto and worker's compensation was $48.81 Billion in 1979, whereas, the "Real Commercial Market" which includes the traditional market plus captive and self-insurance was approximately $58 Billion or 22% larger. They estimated, at that time, that by 1984 the real market would be 40% larger than the traditional market as self-insurance and captive insurance companies become more widespread.

Our method of estimating the loss adjustment expenses of captive and self-insurers is as follows: First, we estimate the traditional and real commercial liability market by examining the lines of commercial auto, medical malpractice,, workers' compensation, commercial multiple peril, ocean marine, aircraft, boiler and machinery and other liability (the lines listed in Schedule P of A.M. Best's Averages and Aggregates). In terms of premiums earned, the data of the traditional market is presented below in table A.6.1 for the years 1979-1984.

To generate the real market we assume, as estimated by Conning and Company for 1979, that the real market is 22% larger than the traditional market in each of the years between 1979-1984. In other words, we make the extremely conservative assumption that the incidence of self-insurance and captive formation has stayed the same over this period. We also assume that the incidence of self-insurance and captive insurance is the same in liability lines as it is in all commercial lines, so that the Conning and Company estimate of 22% is relevant to the liability market. (Actually, one would think that self-insurance and captive insurance companies would find larger representation in the commercial liability lines. Hence, this assumption is conservative as well). This yields our estimate of the real market in Row 10. The difference between the real market and the traditional market is presented in Row 11. This is our estimate of the premiums that would have been earned by non-captive insurers if all self-insurance and captive insurers failed to exist and these premiums were earned by non-captives. To get our estimate of the allocated (unallocated) loss adjustment expense of captive and self-insurerd, we simply assume that the (allocated (unallocated) loss expenditures)/(premiums earned) ratio is the same for captives and self-insureds as it is for non-captives. Hence, we have

Allocated (unallocated) Loss Expenditures for Captives and Self-Insureds) = [imputed premiums earned by captives and self-insureds]

x (allocated (unallocated) loss expenditures)/(premium earned) ratio of non-captives)

These figures are presented in rows 12 and 13 of table A.6.1.

Table A.6.1

Estimation of the Traditional and REal Commercial Liability Markets and Allocated and Unallocated Expenses (000's)

Lines	Year 1979	1980	1981	1982	1983	1984
1) Commercial Auto	4584229	4656531	4746667	4706864	4710806	5157622
2) Other Liability	6545687	6598013	6103671	5718789	5730651	6250809
3) Medical Malpractice	1180130	1199092	1266033	1358180	1508510	1707377
4) Worker's Compensation	12653089	13894660	14407352	13918055	14097342	15153061
5) Commercial Multiple Peril	6316616	6737616	6726277	6925255	7201093	7875565
6) Ocean Marine	995450	1050234	1107991	1097266	1075929	1141918
7) Aircraft	139924	162201	194833	232353	279741	371447
8) Boiler and Machinery	274198	288040	292266	293877	366940	378770
9) Traditional Commercial Market (sum of rows 1-8)	32689323	34586387	34845090	34250639	34971012	38036569
10) Real Market (100/88 x Traditional Mkt.)*	41909388.	44341521.	44673192.	43911075.	44834630.	48764832.
11) Captive and Self-Insured Mkt.	9220065.4	9755134.7	9828102.3	9660436.6	9863618.7	10728263.
12: Allocated Loss Expenditures of captive and self-insureds paid and un-paid	515039.43	563181.38	597304.91	628398.74	681960.23	943830.57
13) Unallocated loss expenditures of captive and self-insureds	435963.26	479562.7	493144.1	481486.6	383699.8	

*This assumes real market is 22% greater than traditional markets in all *years.

APPENDIX A.7

Table A.7.1

Estimation of Allocated and Unallocated Costs of Alien Reinsurers on Premiums ceded Abroad.

Year	(1) Net Premiums ceded Abroad	(2) Total Earned Premiums	(3) % Premiums ceded Abroad	(4) Schedule P Premiums	(5) Schedule P Premiums ceded Abroad [(3)x(4)]
1979	1,818,600	86,917,120	.020	58,654,371	1,227,247.7
1980	1,896,700	93,729,077	.020	62,803,908	1,270,898.8
1981	2,108,600	79,465,271	.021	64,995,949	1,406,146.5
1982	2,100,400	102,005,005	.020	67,100,598	1,381,678.2
1983	2,165,600	106,968,506	.020	70,529,637	1,427,886.3
1984	2,395,900	114,638,569	.020	76,250,768	1,593,610.3

Year	(6) (Allocated Adjstmnt Expenses/Sched. P Premiums Earned) Ratio	(7) Alctd.+ Unalctd. Adj. Exp,	(8) (Alctd.+ Unalctd. Adj. Exp./Sch. P Prem. Earned) Ratio	(9) Alctd. Adj. Exp. of Alien Reinsurers [(5)x(6)]	(10) Alctd. + Unalctd. Adj. Exp. of Alien Reinsurers
1979	.055	6,049,899	.103	68,554.9	187,579.3
1980	.570	6,713,225	.107	73,371.2	202,741.7
1981	.060	7,211,442	.110	85,458.8	233,953.7
1982	.065	7,788,756	.116	89,876.3	243,805.6
1983	.069	8,319,207	.118	98,722.5	255,439.7
1984	.087	9,435,377	.124	140,199.6	296,472.0

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[1] All lines refer to: Allied lines, farmowners' multiple peril, homeowners' multiple peril, commercial multiple peril, ocean marine, inalnd marine, group accident and health, other accident and health, workers compensation, other liability, medical malpractice, aircraft, private passenger auto, commercial auto, private passenger auto physical damage, commercial auto physical damage, fidelity surety, burglary and theft, boiler machinery, reinsurnace, other lives.

[2] Schedule P lines: auto liability, other liability, medical malpractice, worker compensation, commercial multiple peril, ocean marine, aircraft, boiler and machinery farmowner's multiple peril, homeowner's multiple peril.

• All data for non-captive domestic insurance companies taken from A.M. Best, Averages and Aggregates, Schehdule P, or Cumulative Byline Underwriting Experience - Industry.

All data on Premiums ceded 'Abroad' taken from U.S. International Transactions 1979-84, U.S. Department of Commerce, Bureau of Economic Analysis, Washington, D.C. 20230.

Appendix A.8

Total Number of Hours Spent on Tort Cases by Lawyers

[Civil Litigation Research Project Data
Broken Down by Type of Case--Tort]

Number of Hours Spent	Number of Lawyers	PCT	CUM PCT	Number of Hours Spent VALUE	Number of Lawyers FREQ	PCT	CUM PCT	Number of Hours VALUE	Number of Lawyers FREQ	PCT	CUM PCT
0	14	3	3	41	1	0	65	106	3	1	88
1	8	1	4	42	1	0	65	110	5	1	89
2	4	1	5	43	1	0	65	114	1	0	89
3	6	1	6	44	1	0	65	115	1	0	90
4	9	2	7	45	7	1	66	120	3	1	90
5	17	3	11	48	4	1	67	122	1	0	90
6	14	3	13	50	15	3	70	123	1	0	90
7	7	1	14	52	3	1	70	125	3	1	91
8	9	2	16	53	1	0	71	130	1	0	91
9	5	1	17	54	2	0	71	131	1	0	91
10	26	5	22	55	7	1	72	145	1	0	92
11	5	1	23	56	4	1	73	150	6	1	93
12	17	3	26	57	3	1	73	155	1	0	93
13	7	1	27	58	3	1	74	175	2	0	93
14	9	2	29	59	1	0	74	176	1	0	93
15	22	4	33	60	11	2	76	190	1	0	94
16	6	1	34	61	1	0	76	195	1	0	94
17	8	1	35	64	1	0	77	200	6	1	95
18	3	1	36	65	3	1	77	225	1	0	95
19	4	1	37	66	2	0	78	235	1	0	95
20	24	4	41	67	2	0	78	250	2	0	96
26	6	1	42	68	1	0	78	260	1	0	96
22	5	1	43	69	1	0	78	270	1	0	96
23	5	1	44	70	1	0	78	275	1	0	96
24	2	0	44	74	2	0	79	290	1	0	96
25	19	3	48	75	5	1	80	300	2	0	97
27	4	1	48	77	1	0	80	310	1	0	97
28	2	0	49	79	2	0	80	345	1	0	97
29	2	0	49	80	10	2	82	350	2	0	97
30	30	5	55	83	1	0	82	400	3	1	98
31	2	0	55	85	5	1	83	410	1	0	98
32	3	1	56	86	3	1	84	500	2	0	99
33	1	0	56	89	1	0	84	650	1	0	99
34	1	0	56	90	4	1	85	775	1	0	99
35	11	2	58	93	2	0	85	1000	3	1	99
36	4	1	59	95	1	0	85	1100	1	0	100
37	1	0	59	98	2	0	86	2200	1	0	100
38	3	1	59	100	11	2	88	2300	1	0	100
40	27	5	64	102	1	0	88				

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Appendix A.9
Legal Billing Rates

Billing rates were estimated using data generated by an annual conducted by Altman and Weil Inc. of Ardmore, PA. The survey is of 388 law firms and its characteristics for 1984 are displayed in tables A9.1 - A.9.4 below.

Table A.9.1
Distribution of Participating Firms by Population of Metropolitan Area

Population	West	Calif	So-West	W-Cent	E-Cent	South	No-East	All
Under 100,000	11	5	8	9	14	20	28	95
100,000 - 250,000	10	2	3	4	11	15	7	52
250,000 - 500,000	8	2	5	3	11	23	14	66
500,000 - 1 Million	8	5	9	6	13	11	12	64
Over 1 Million	8	8	9	15	28	15	28	111
All Areas	45	22	34	37	77	84	89	388

Table A.9.2
Distribution of Participating Firms By Organization of Firm

Type of Firm	West	Calif	So-West	W-Cent	E-Cent	South	No-East	All
Sole Proprietorship	0	0	0	1	1	0	1	3
Partnership	20	14	24	19	37	44	48	206
Prof Corp/Assoc	25	8	10	17	39	40	40	179
All Firms	45	22	34	37	77	84	89	388

Table A.9.3
Distribruion of Participating Firms
By Number of Lawyers Within Firm

Size of Firm	West	Calif	So-West	W-Cent	E-Cent	South	No-East	All
2 to 8 Lawyers	18	8	11	11	25	39	45	157
9 to 20 Lawyers	20	8	10	12	21	27	21	119
21 to 40 Lawyers	4	3	3	12	22	11	12	67
41 to 74 Lawyers	1	3	8	1	3	7	8	31
75 or more Lawyers	2	0	2	1	6	0	3	14
All Firms	45	22	34	37	77	84	89	388

Table A.9.4
Ratio of Associates to Partners/Shareholders
(By size of Firm)

Size of Firm	West	Calif	So-West	W-Cent	E-Cent	South	No-East	All
2 to 8 Lawyers	0.47	0.87	0.58	0.47	0.51	0.60	0.40	0.51
9 to 20 Lawyers	0.69	1.03	0.74	0.75	0.56	0.60	0.70	0.67
21 to 40 Lawyers	0.90	1.14	0.63	0.58	0.72	0.62	0.93	0.73
41 to 74 Lawyers	1.40	0.89	0.89	0.51	0.70	0.63	0.78	0.78
75 or more Lawyers	0.81	0.00	1.27	0.91	1.17	0.00	1.17	1.11
All Firms	.76	.99	.89	.64	.81	.61	.78	.76

The billing rates used in our study were a weighted average of the billing rates of firms doing insurance defense work and those not doint it. They are presented in table A.9.5 below.

Table A.9.5

Year	Average Billing Rate
1979	68.2
1980	75.99
1981	81.63
1982	85.99
1983	94.96
1984	97.07

Appendix A.10
Legal Cost of Claims Settled Before Filing

Table A.10.1

Estimation of Legal Cost for claims settled before filing.
General jurisdiction plus U.S. District Courts: Method A.

	1 Court Cases Filed in General Jurisdiction and U.S. District Courts[1]	2 Total Claims (857/38) x (Column 1)[2]	3 Claims Employing Lawyers But Settled Before Filing (78/857) x (Column 2)[3]
1979	593141	13376890	1217499
1980	621417	14014588	1275540
1981	633806	14293993	1300970
1982	641980	14478338	1317748
1983	648823	14632666	1331794
1984	656349	14802397	1347242

4 Total Number of Lawyers Employed Per Claim	5 Average Number of Hours Per Lawyer[4]	6 Hourly Billing Rates[5]	7 Total Legal Cost of Claims Settled Before Filing (3x4x5x6) in Billions
2	10.4	68.2	1.727
2	10.4	75.99	2.016
2	10.4	81.63	2.208
2	10.4	85.99	2.356
2	10.4	94.96	2.631
2	10.4	97.07	2.720

1) See Appendix A.1 for details.
2) Since the Civil Litigation Data, Miller and Sarat (1983) demonstrate that $(38/857)^{th's}$ of all claims lead to a case filing, filed cases are (857/38) of all claims.
3) Miller and Sarat (1983) indicate that $(116/857)^{th's}$ of all claims lead to lawyers being hired, since (38/857) lead to a case filing, (78/857) of all claims must involve the use of lawyers but not lead to a case being filed.
4) See Appendix A.8
5) Altman and Weil Survey--see Appendix A.9 for details.

Table A.10.2

Estimation of Legal Cost for Claims Settled Before Filing. Limited and General Jurisdiction plus U.S. District Courts: Method A.

	1	2	3	4	5	6	7
	Court Cases Filed in Limited Plus General Jurisdiction and U.S. District Courts[1]	Total Claims (857/38) x (Column 1)[2]	Claims Employing Lawyers But Settled Before Filing (78/857) x (Column 2)[3]	Total Number of Lawyers Employed Per Claim	Average Number of Hours Per Lawyer[4]	Hourly Billing Rates[5]	Total Legal Cost of Claims Settled Before Filing (3x4x5x6) in Billions
1979	881161	19826122	1804476	2	10.4	68.2	2.566
1980	878761	19772122	1799263	2	10.4	75.99	2.765
1981	907529	20419402	1858165	2	10.4	81.63	3.005
1982	918428	20664630	1880481	2	10.4	85.99	3.161
1983	927873	20877142	1899819	2	10.4	94.96	3.444
1984	937943	21103717	1920438	2	10.4	97.07	3.540

1) See Appendix A.2 for details.

2) Since the Civil Litigation Data, Miller and Sarat (1983) demonstrate that (38/857)$^{\text{th's}}$ of all claims lead to a claim filing, filed cases are (857/38) of all claims.

3) Miller and Sarat (1983) indicate that (116/857)$^{\text{th's}}$ of all claims lead to lawyers being hired, since (38/857) lead to a case filing, (78/857) of all claims must involve the use of lawyers but not lead to a case being filed.

4) See Appendix A.8.

5) Altman and Weil Survey -- see Appendix A.9 for details.

Table A.10.3

Estimation of Legal Cost for claims settled before filing. General Jurisdiction plus U.S. District Courts: Method B.

	1 Court Cases Filed in General Jurisdiction and U.S. District Courts[1]	2 Total Claims (857/38) x (Column 1)[2]	3 Claims Employing Lawyers But Settled Before Filing (78/857) x (Column 2)[3]
1979	1679703	37793317	3439191
1980	1567583	35270617	3209626
1981	1440344	32407740	2949104
1982	1495300	33644250	3061626
1983	1551171	34901347	3176022
1984	1609906	36222885	3296282

4 Total Number of Lawyers Employed Per Claim[4]	5 Average Number of Hours Per Lawyer[5]	6 Hourly Billing Rates[6]	7 Total Legal Cost of Claims Settled Before Filing (3x4x5x6) in Billions
2	10.4	68.2	2.40
2	10.4	75.99	2.50
2	10.4	81.63	3.51
2	10.4	85.99	3.74
2	10.4	94.96	3.14
2	10.4	97.07	3.33

1) See Appendix A.2 for details.
2) Since the Civil Litigation Data, Miller and Sarat (1983) demonstrate that $(38/857)^{\text{th's}}$ of all claims lead to a case filing, filed cases are (857/38) of all claims.
3) Miller and Sarat (1983) indicate that $(116/857)^{\text{th's}}$ of all claims must involve the use of lawyers but not lead to a case being filed.
4) See Appendix A.8.
5) Altman and Weil Survey -- see Appendix A.9 for details.

Table A.10.4

Estimation of Legal Cost for claims settled before filing. Limited and General Jurisdiction Plus U.S. District Courts: Method B.

	1	2	3
	Court Cases Filed in Limited, General Jurisdiction and U.S. District Courts[1]	Total Claims (857/38) x (Column 1)[2]	Claims Employing Lawyers But Settled Before Filing (78/857) x (Column 2)[3]
1979	1945703	43778317	3983826
1980	1876373	42218392	3841873
1981	1825292	41069070	3737285
1982	1894684	42630390	3879365
1983	1,965,531	44224447	4024424
1984	2,039,800	45895500	4176490

4	5	6	7
Total Number of Lawyers Employed Per Claim	Average Number of Hours Per Lawyer[4]	Hourly Billing Rates[5]	Total Legal Cost of Claims Settled Before Filing (3x4x5x6) in Billions
2	10.4	68.2	2.70
2	10.4	75.99	2.83
2	10.4	81.63	2.85
2	10.4	85.99	3.09
2	10.4	94.96	3.51
2	10.4	97.07	3.71

1) See Appendix A.2 for details.
2) Since the Civil Litigation Data, Miller and Sarat (1983) demonstrate that (38/857)th's of all claims lead to a case filing, filed cases are (857/38) of all claims.
3) Miller and Sarat (1983) indicate that (116/857)th's of all claims lead to lawyers being hired, since (38/857) lead to a case filing, (78/857) of all claims must involve the use of lawyers but do not lead to a case being filed.
4) See Appendix A.8.
5) Altman and Weil Survey -- see Appendix A.9 for details.

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Representative LUNGREN. Thank you very much. I would just like to interject, as one who was involved in this system for a long time, that some of us who are participants in the system kind of enjoy it, if you like competition.

Perhaps there's no better opportunity or forum than being in a courtroom representing one side or the other. Once one is a part of the system, it becomes very difficult to step outside and see what the total administrative and allocative costs really are and whether or not they are appropriate.

Next we have Mr. Robert Sturgis, of Tillinghast Risk Management. Welcome.

STATEMENT OF ROBERT W. STURGIS, VICE PRESIDENT AND DIRECTOR, TOWERS, PERRIN, FORSTER & CROSBY, INC., AND MANAGING PRINCIPAL OF ITS TILLINGHAST RISK MANAGEMENT & CASUALTY INSURANCE DIVISION

Mr. STURGIS. Welcome. I see our extension cord just arrived and we have not had an opportunity previously to see whether the projector is working.

[Slide.]

I welcome this opportunity to present the findings of my studies on the cost of the U.S. tort system. My findings were originally presented at a meeting of the American Insurance Association at their annual meeting in Chicago in 1985.

The full results are attached to my prepared statement. I believe half are compiled copies perhaps for the press, xerox copies, illegible. There are copies of color brochures and if you wish to read them, I recommend those.

My estimate of the total cost of the U.S. tort system in 1984 is $68 billion, consisting of four parts:

The biggest part is the insured cost, those costs that are covered by insurance companies, representing $55 billion, or 80 percent of the total. This represents both the expenses and the benefits paid out by those insurance companies.

The self-insured component is the next biggest piece of about $12 billion or 17 percent of the total cost, and that's a significant part of the commercial insured piece, about 50 percent as large as the insured piece on commercial risks.

The other two pieces of the estimated cost are the cost of maintaining risk management services in corporations and, lastly, the cost of court administration as compiled by the Institute of Civil Justice.

I'd like to make two points about the meaning of my definition of cost. First of all, this is total gross cost. That is, I have made no attempt to subtract any benefits that derive from the system, but the total gross dollars that are expended. Second, this includes, unlike my colleagues at the table, in some of their numbers at least, all claims that are settled, and not just cases that are litigated.

I constructed an index because I was particularly interested in how costs have changed over time, and I constructed an index consisting of only the first two components of this total cost which, as I said, represents 97 percent of the total in 1984.

[Slide.]

As you can see from this graph, the growth in the tort system cost has outstripped the gross national product by a substantial margin. The gross national product itself has grown by 65 times in the approximately 50-year period shown on this graph, 1933 to 1984.

However, this difference between the growth in the tort system and GNP appears to be a phenomenon beginning in the late forties or early fifties.

[Slide.]

Here we show the cost from 1933 to 1950, and the total increase in the cost of the tort system was a factor of five over that 17-year period, essentially identical to the growth rate of GNP, and I have added the workers' compensation system and was somewhat surprised to see that its growth rate was identical, at least compounded over that 17-year period.

As you can see, the growth of the tort system did lag during the World War II period.

[Slide.]

As I mentioned, the cost of the tort system escalated dramatically beginning in the late forties or early fifties, outstripping GNP. Surprisingly, at least to me, the cost of the workers' compensation system, however, also escalated, showing a growth rate almost the same as the cost of the tort system.

During that period or during the period 1950 to 1984, the cost of the workers' compensation system increased by 31 times, the cost of the tort system by 39 times, while GNP was only increasing by 13 times.

Those numbers are absolute increases, including inflation.

If we normalize them and calculate real growth rates excluding inflation as measured by the consumer price index, our gross national product has tripled since 1950, the cost of the workers' compensation system has increased by more than seven times, and the cost of the tort system by almost nine times.

In view of the similarity in growth rate which, as I said, was surprising to me between tort and the workers' comp—the reason I say surprising is because workers' comp is a system whereby injured workers are compensated without having to prove fault and in almost all cases without resorting to the court system—I compared the rate of increase with other entitlements systems.

[Slide.]

This chart can be viewed as a thermometer showing the real rate of growth between 1950 and 1984. During that period, our population has increased by 60 percent, the work force by 80 percent.

As I mentioned, GNP has tripled as have the number of lawyers and disposable income. Somewhat facetiously I show the number of actuaries. The total number of government expenditures increased almost fivefold; government expenditures for education by 5.6 times; total health care expenditures by the population by more than seven times and about the same as the rate of growth in workmen's comp.

The growth in the tort system as shown previously by almost nine times; public aid over nine; total government outcare by more than 12 times and the cost of social insurance system by more than 18 times.

Therefore, the actual rate of growth in the tort system does not outstrip some other entitlement systems in our society. Does this mean that the tort system is working well?

Not necessarily. One measure of efficiency is where those dollars go.

[Slide.]

This chart shows only the insured portion of the index where the data was readily available. It shows that 63 percent of the total cost goes to claimants; 23 going to the cost of administration and another 5 to the cost of handling claims inhouse and 9 percent to outside defense attorneys.

But of the 63 percent a portion goes to plaintiff's attorneys, a portion is awarded for pain and suffering and the remainder can be considered direct compensation for actual economic loss.

My estimate of that proportion is 25 percent of the actual cost.

[Slide.]

This chart compares that portion of the total cost that goes to compensate for direct economic loss:

Twenty-five percent of the tort system, compared to 70 percent of workers' compensation, and 85 percent in health insurance.

I might also mention of costs that in the tort system there are parties who receive nothing because they are unable to prove fault. The U.S. tort system, in summary, was not intended to be an entitlement system, but with respect to cost, it has behaved similarly to other entitlement systems in our society, but with a far lower rate of efficiency.

Thank you.

[The prepared statement of Mr. Sturgis, together with an attachment, follows:]

PREPARED STATEMENT OF ROBERT W. STURGIS

Mr. Sturgis is a Vice President and Director of Towers, Perrin, Forster & Crosby, Inc., and the Managing Principal of its Tillinghast Risk Management and Casualty Insurance Division.

Mr. Sturgis is a Member of the American Academy of Actuaries and a Fellow of the Casualty Actuarial Society. He served on the Board of Directors of the Casualty Actuarial Society and on the National Association of Insurance Commissioners Advisory Committee on the funding for occupational disease.

Mr. Sturgis' experience includes fifteen years with Aetna Life and Casualty Company where he was in charge of all commercial lines of actuarial work. He is a past-president of the Casualty Actuaries of New England and has served on several Casualty Actuarial Society and American Academy of Actuaries Committees. Mr. Sturgis authored two papers in the Casualty Actuarial Society **Proceedings** entitled "Econometric Model of Workmens' Compensation" and "Actuarial Valuation of Property/Casualty Insurance Companies."

Mr. Sturgis has extensive consulting experience in virtually all aspects of casualty-property insurance - strategic and financial planning, acquisitions and mergers, product design, pricing, reserving, and regulation. He has had extensive experience in working with individual risks on levels of self-insurance, as well as with captive insurance company operations.

THE COST OF THE U.S. TORT SYSTEM

I welcome this opportunity to appear before the Subcommittee to discuss my studies and conclusions on the Cost of the U.S. Tort System.

Results of my studies were first presented at the 1985 Annual Meeting of the American Insurance Association in Chicago. The tort system was a focus of that meeting and several speakers from within and outside of the insurance industry presented their views on the "liability insurance crisis". Since that presentation, my remarks and the summary attached hereto have been quoted widely in the press and by both proponents and opponents of tort reform.

I am not here to argue a particular point of view on the merits of our tort system, but rather to simply present to you the findings of my studies on the cost of that system today and how those costs have changed over time.

The cost of the U.S. tort system has escalated by almost 40 times (4,000%) since 1950. This compares to an approximate increase in our gross national product of 13 times over the same period. These increases are, of course, influenced by inflation. Corresponding rates of increase, adjusted for inflation, are nine-fold for the tort system and three-fold for the GNP. This disparity in growth rates was not always the case. From 1933 to 1950 the rate of growth in the U.S. tort system was virtually identical to our GNP. The rate of growth was also similar for our Workers' Compensation system which was designed to compensate injured workers without regard to fault and without litigation.

The cost of the tort system took off like a rocket in the 1950's, but other social systems also escalated their rate of growth after 1950.

While population has grown by 60% and the number of lawyers by 200%, inflation adjusted costs for workers' compensation have grown by 600%, tort costs by 800%, public aid by 800%, government health care expenditures by more than 1,000%, and social insurance by almost 2,000%.

It is relatively easy to determine the proportion of tort costs paid by insurance companies to claimants in the form of settlements or jury verdicts. This proportion is approximately 63%. It is much more difficult to determine the distribution of that 63%.

A portion goes to attorneys' fees, a portion goes to indemnify actual economic losses such as medical costs and lost wages, and a portion remains with the claimant to compensate for pain and suffering. My estimate is that of the 63% paid by insurance companies to claimants, 25% goes to compensate actual economic losses sustained by claimants. This 25% "efficiency" contrasts with 70% for the workers' compensation system and 85% for the health insurance system.

The United States' tort system was not intended to operate as an entitlement system. However, it is my observation that with respect to cost it has behaved in a manner similar to entitlement systems in this country, but with a far lower rate of efficiency.

The Cost of the U.S. Tort System

Robert W. Sturgis

Tillinghast

Mr. Sturgis is a Director of Tillinghast, Nelson & Warren, Inc. and the Managing Principal of the Casualty and Risk Management Division. He is a graduate of the University of Maine.

Mr. Sturgis is a Member of the American Academy of Actuaries and a Fellow of the Casualty Actuarial Society. He served on the Board of Directors of the Casualty Actuarial Society and on the National Association of Insurance Commissioners Advisory Committee on Occupational Disease.

Mr. Sturgis' experience includes fifteen years with Aetna Life and Casualty Company where he was in charge of actuarial aspects of commercial lines. He is a past-president of the Casualty Actuaries of New England and has served on several Casualty Actuarial Society and American Academy of Actuaries committees. Mr. Sturgis authored two papers in the Casualty Actuarial Society Proceedings entitled "Economic Model of Workmen's Compensation" and "Actuarial Valuation of Property/Casualty Insurance Companies."

Mr. Sturgis has extensive consulting experience in many aspects of casualty-property insurance - strategic and financial planning, acquisitions and mergers, product design, pricing, reserving, and regulation. He also has worked extensively with individual risks on levels of self-insurance, as well as with captive company operations.

AN ADDRESS TO THE
AMERICAN INSURANCE ASSOCIATION

by

Robert W. Sturgis

Tillinghast, Nelson & Warren, Inc.

Chicago, Illinois

November 14, 1985

Preface

Amid growing debate on the troubled Tort System in the United States, the American Insurance Association commissioned Tillinghast, Nelson & Warren, Inc. to undertake a study of the System's costs during the period 1933 to 1984.

The results of this study were presented by Robert W. Sturgis at the Annual Meeting of the Association held in Chicago on November 14, 1985.

The summary of Mr. Sturgis' address is presented through a display of charts, graphs and statistical data. The source of these data are given in the Appendices.

> "The cost of the U.S. tort system has escalated by almost 4,000% since 1950, but troubling as this may be, it is no worse than other entitlement systems in our society. The system is not working, but the problem is more one of inequity than cost."

For the period 1933 to 1950, the cost of the tort system increased five-fold, which was virtually identical to the increase in the Gross National Product (GNP). Workers' Compensation costs also increased by a factor of five. However, the cost of the tort system took off like a rocket in the 1950's increasing by 37 times by 1984, while GNP was increasing by a factor of 12.

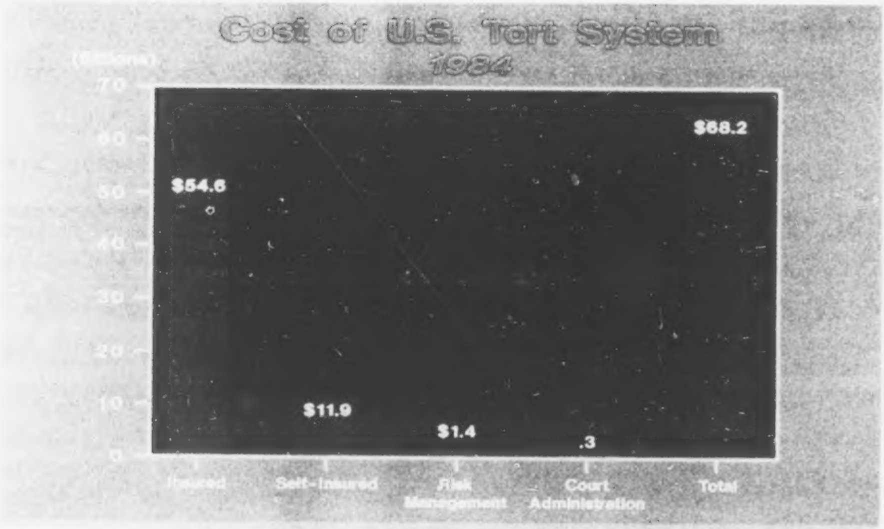
This finding was expected. What was unexpected was the finding that other social systems have increased by similar or even greater magnitudes.

While population has grown by 60% and the number of lawyers by 200%, Workers' Compensation costs adjusted for inflation have grown by 600%, tort costs by 700%, public aid by 800%, government health care expenditures by more than 1,000% and social insurance by almost 2,000%.

Mr. Sturgis acknowledged that escalating costs are a serious problem in the U.S. tort system, but he asserted that the problem is not unique to that system and is related to society's values of entitlement.

Mr. Sturgis agreed with other recent commentators, who have characterized the way the tort system is working as reprehensible, but stated that the problem is not so much one of cost as equity. He estimated that only 25% of tort costs go to victims to compensate economic loss, as compared to 70% in Workers' Compensation and 85% in health insurance. "The real issue", he said, "is not whether the tort system is insurable, or whether the insurance industry can afford it. The real issue is whether the American public will much longer tolerate a $68 billion system that returns 25 cents on the dollar to those who win the fault lottery, and nothing to those who lose."

What were the costs of the tort system in 1984?



- The costs represented are gross costs, that is, without regard to any social or economic benefit derived from the system.
- The estimated cost of the U.S. Tort System in 1984 was $68.2 billion.
- Insured costs (expenses and benefits) paid by insurance companies represent $55 billion or 82% of the total cost.
- Self-insured costs represent $12 billion or 18% of the total cost, and about 50% of the insured, commercial lines costs.
- The cost of corporate risk management is $1.4 billion while the cost of court administration is only $.3 billion, as estimated by the institute of Civil Justice

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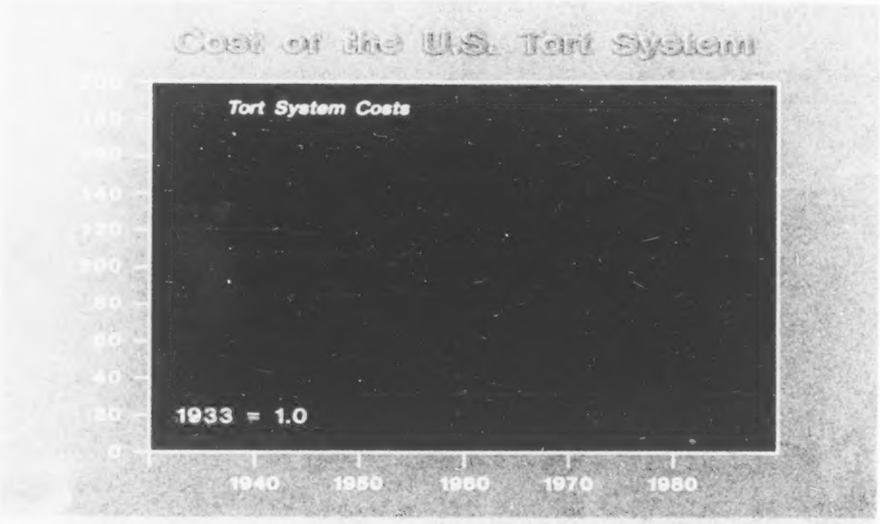
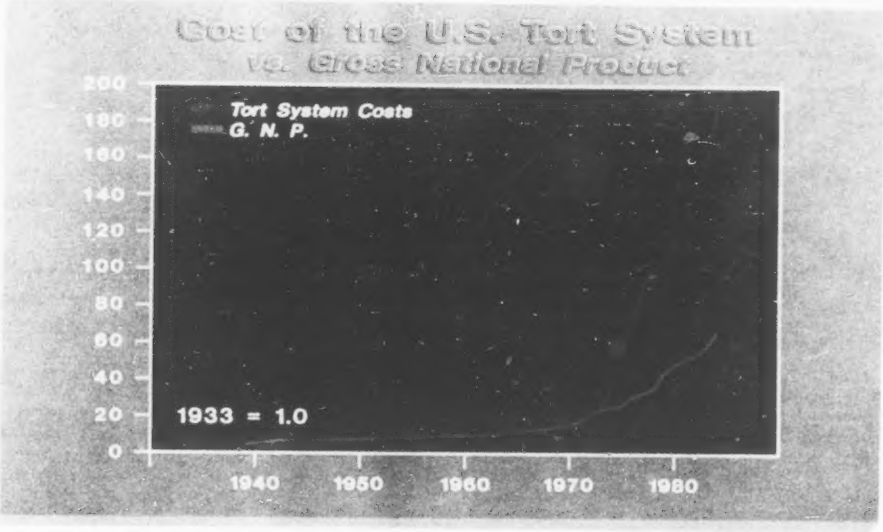
How have these costs changed over time?



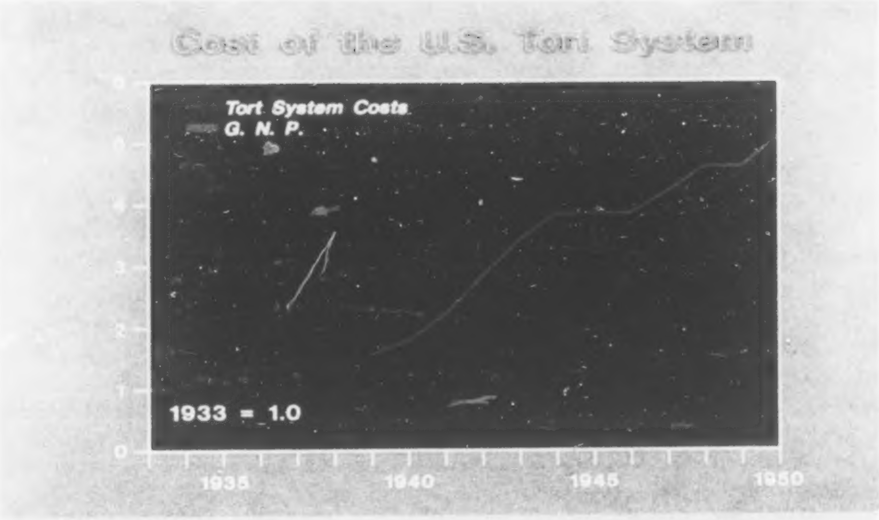
- Estimated costs, both insured and self-insured, have increased by more than 200 times since 1933.
- The costs of court administration and risk management (2% of 1984 total) are excluded because of lack of historical data.

Has tort system growth exceeded the growth in GNP?



- Tort System growth has outstripped growth in the Gross National Product (GNP) which itself has increased by 65 times since 1933.
- Tort System costs growth relative to GNP is a phenomenon which appears to have begun in the late 1940's or early 1950's.

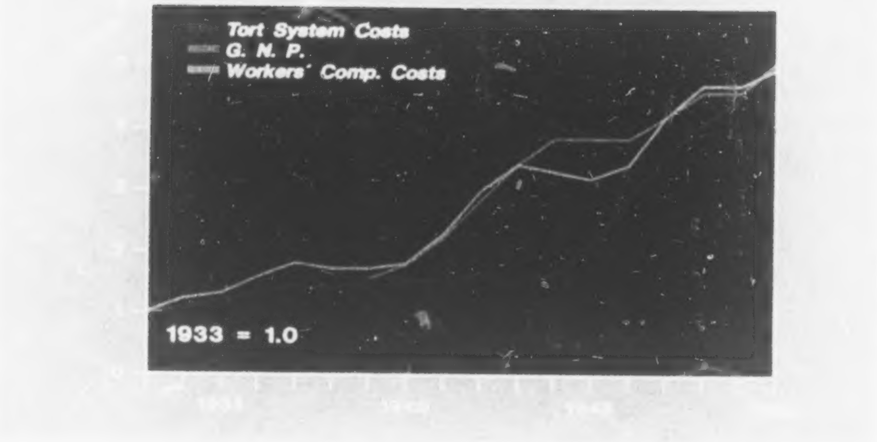
What happened during World War II and the post war period?



- During World War II, Tort system costs were nearly level while the GNP surged with the war effort.
- Following World War II, Tort System costs accelerated, closing the growth gap with GNP by 1950.
- For the 17-year period 1933 to 1950, the compound growth rates for the Tort System and the GNP were identical - - both increased by a factor of five.

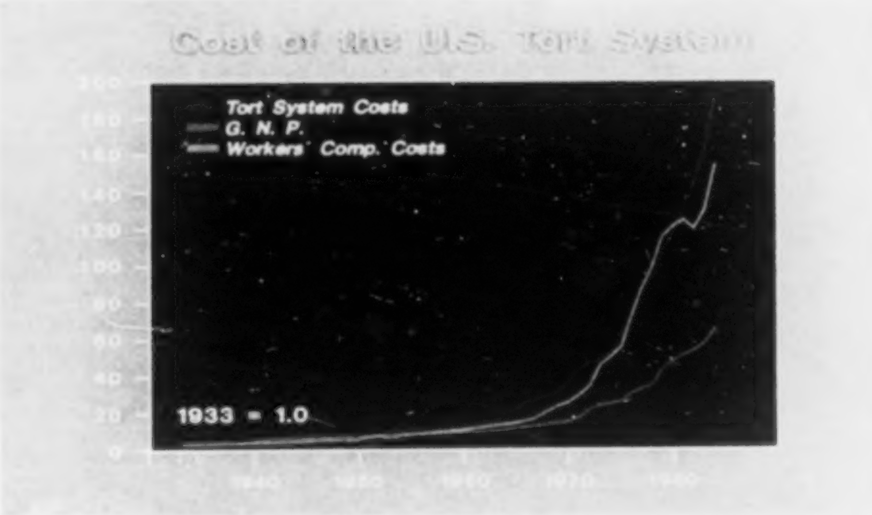
What nappened to Workman's Compensation costs?

Cost of the U.S. Tort System



- During 1933-1950, the cost of the U.S. Workers' Compensation System paralleled the GNP.
- GNP, Workers' Compensation and Tort costs experienced the same compound growth rate from 1933 to 1950, increasing by a factor of five.

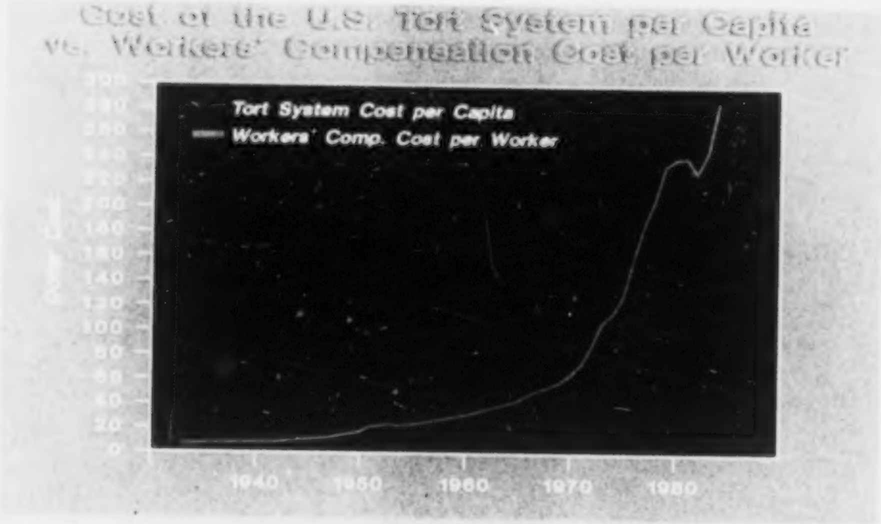
What happened after 1950?



- Surprisingly, the cost of Workers' Compensation shows a growth pattern since 1950 similar to that of the Tort System.

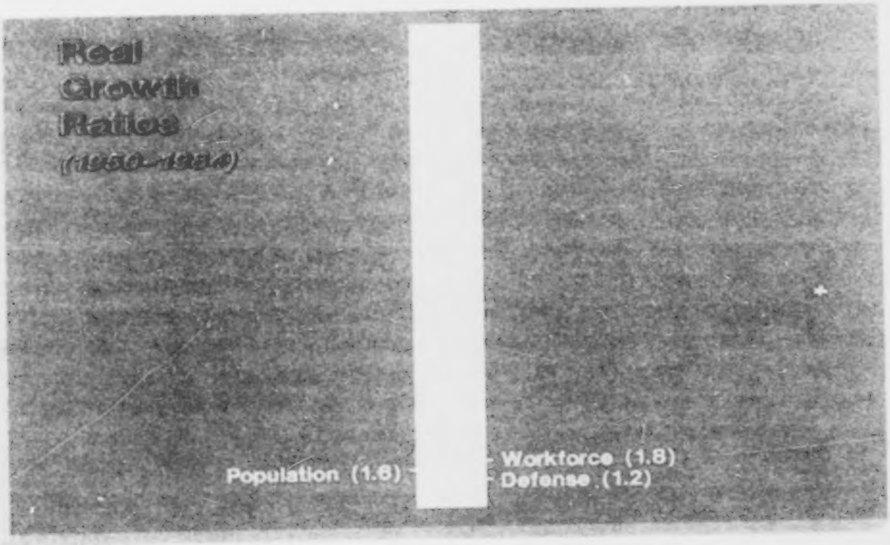
- Workers' Compensation costs increased by 31 times since 1950 compared to 39 times for the cost of torts and only 13 times for the GNP.

What were the per capita costs?



- When looking at a dollars per exposure, the similarity between tort and Workers' Compensation costs is even more striking.
- Tort costs per capita in 1984 were $281, as compared to $287 per worker for Workers' Compensation.
- This cost similarity between the two systems existed throughout the 50-year period studied.
- Corresponding per capita costs in 1933 were $3 and $4.

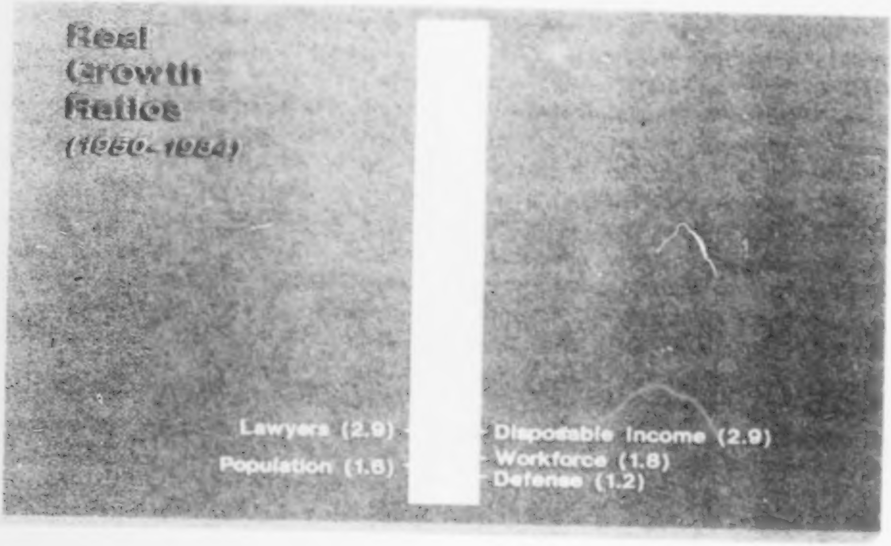
What were the growth rates of other related statistical indices since 1950?



- During the period in which population increased by 60% and the workforce by 80%, national defense expenditures increased by only 20% in real terms. (All dollar growth are inflation-adjusted.)

- The national defense growth shown is based on the 1952-1984 period following the mobilization for the Korean War. The national defense growth ratio from 1950 is 2.8, similar to the GNP increase ratio of 3.0.

What about the number of lawyers and disposable income?

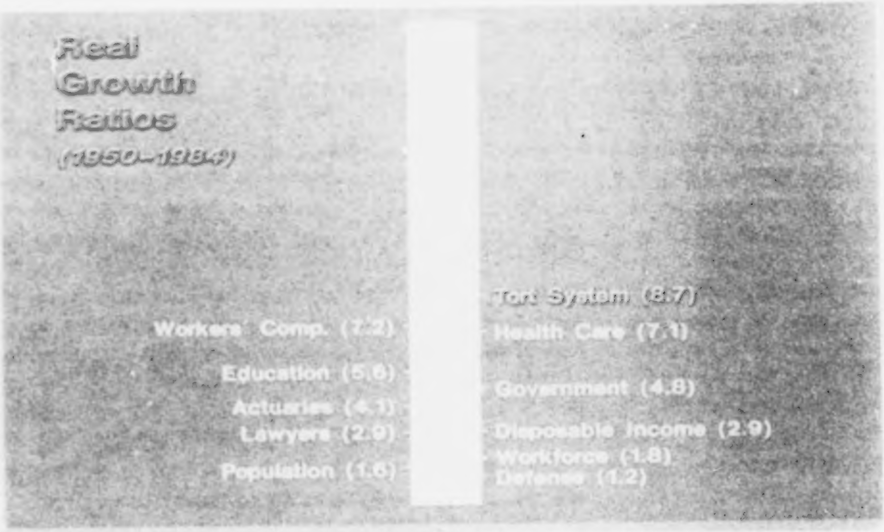


- Disposable income increased by a factor of 2.9, essentially equal to the growth in real GNP.

- While some have blamed the increased tort cost on the increase in the number of attorneys, the latter growth rate is actually less than the growth rate of real GNP.

- This makes it difficult for actuaries, whose ranks have increased by 4 times, to point the finger at lawyers as the root cause of escalating tort costs.

What other systems increased less than the tort system?



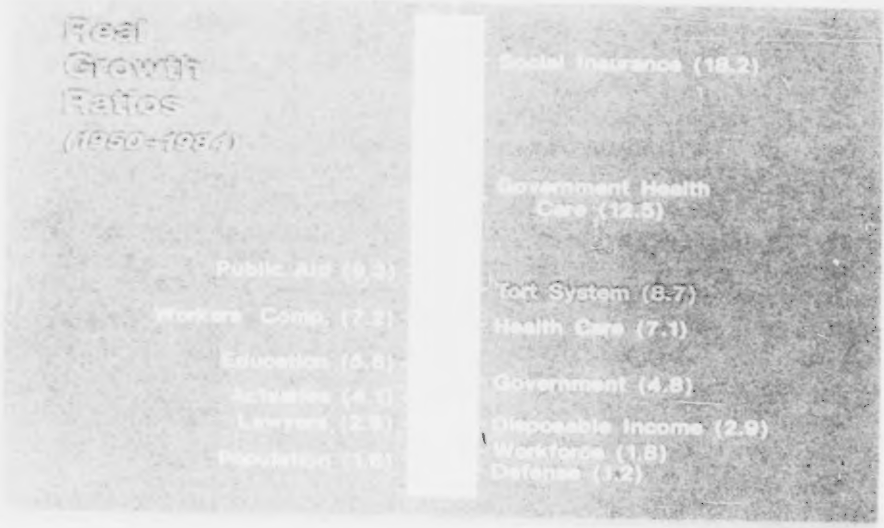
Real Growth Ratios (1950–1984)

Workers' Comp. (7.2)
Education (5.6)
Actuaries (4.1)
Lawyers (2.9)
Population (1.6)

Tort System (8.7)
Health Care (7.1)
Government (4.8)
Disposable Income (2.9)
Workforce (1.8)
Defense (1.2)

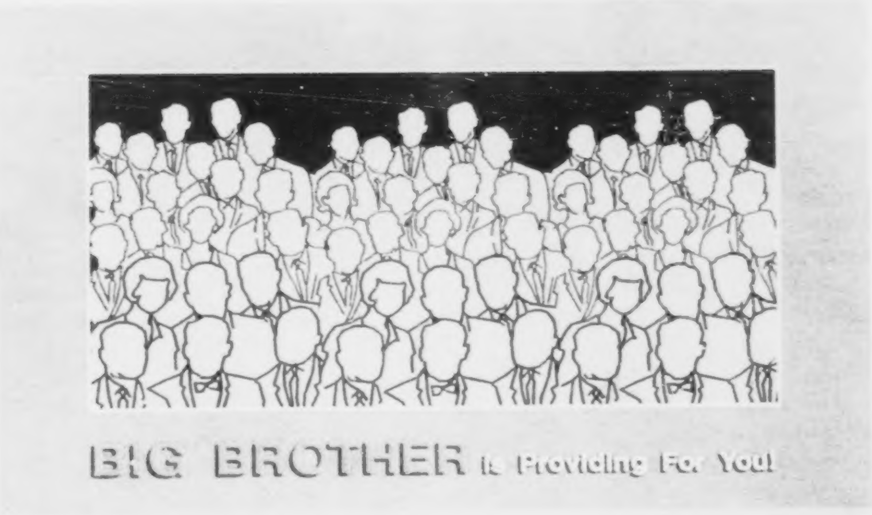
- The cost of other systems increased considerably more than the GNP, but less than the cost of torts.
- Total state, local, and federal government expenditures increased by a factor of 4.8.
- Government expenditures for education increased by a factor of 5.6.
- Total expenditures for health care increased by a factor of 7.1 almost equal to the rate of increase for Workers' Compensation.

Were there systems that increased faster than the cost of torts?



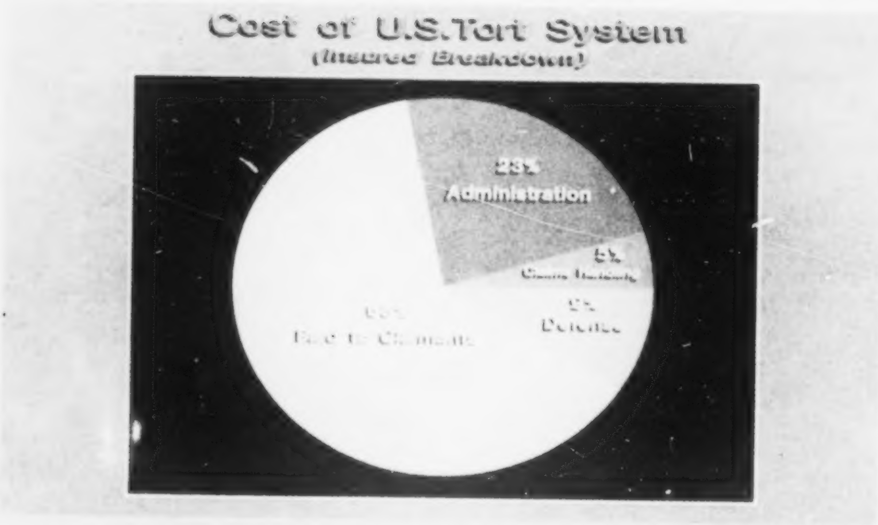
- Public welfare expenditures increased more than nine times.
- Government health care expenditures increased more than twelve times.
- Social Insurance expenditures increased more than eighteen times.
- Again, all dollar increases are expressed as real growth, i.e., adjusted for inflation, which increased 4.3 times in real dollars over the period.

What does this tell us about the Tort System in our society?


BIG BROTHER Is Providing For You!

- It has been asserted that the U.S. Tort System is now only a victim's compensation system, and that society's current view is that every social ill should be righted, and that somebody must pay.
- The cost of the Tort System has increased by more than 35 times since 1950, but this is less than the rate of increase in other entitlement systems.
- While the problem of escalating costs is not unique to the Tort System, it does have problems that set it apart from other entitlement systems.

Where does the money go?



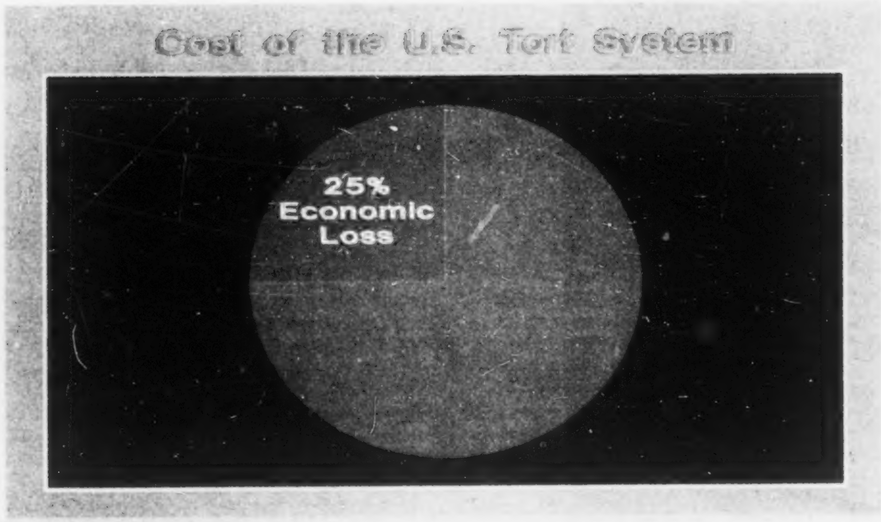
- As stated, cost estimates are gross costs, which are broken down as shown above.

- 63% of the insured costs in 1984 were in the form of claims payments.

- 14% of the costs were associated with the administrative and legal expenses associated with the defense of claims against insureds.

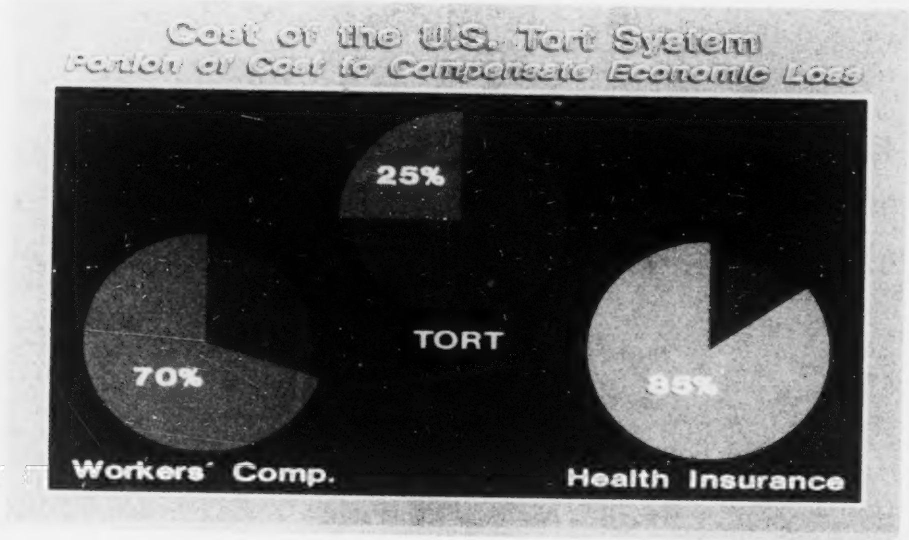
- 23% of the costs were in administration, including sales expenses. This ratio has declined steadily over the past fifty years; from 38% in the 1930's and 1940's, 32% in the 1950's, 29% in the 1960's, and 25% in the 1970's.

What percent of every dollar filters down to the claimant?



- While 63% of the insured tort costs go directly to third party claimants, much of that goes for plaintiffs' expenses and legal costs.
- Dollars actually retained by plaintiffs include awards for pain and suffering, as well as compensation for actual economic loss such as medical costs and lost wages.
- Only 25¢ of every dollar goes to compensate economic losses sustained by claimants.

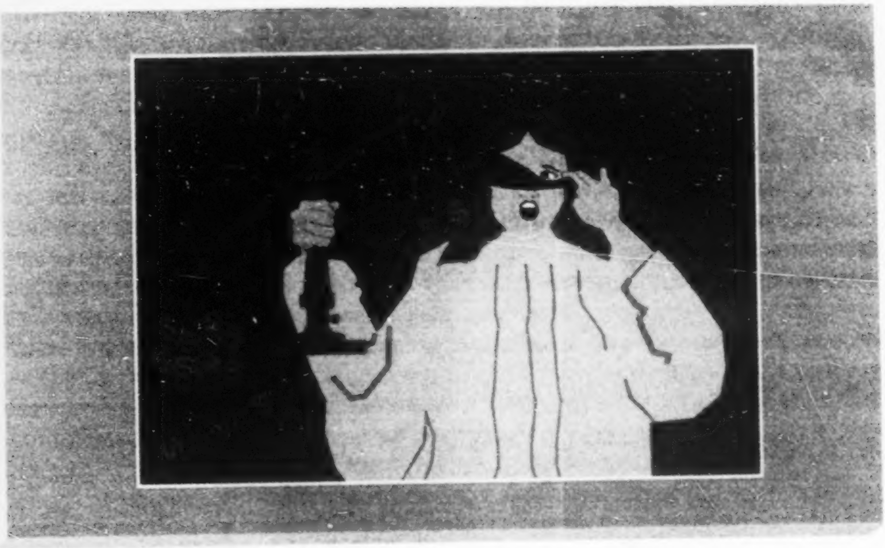
How does this 25% relate to comparable percents for Workers' Compensation and health insurance?



Cost of the U.S. Tort System
Portion of Cost to Compensate Economic Loss

- This 25% "efficiency" contrasts with 70% for the Workers' Compensation system and 85% for health insurance.

What is the important question?



...the real question is whether the American public will much longer tolerate a $68 billion system that returns 25 cents on the dollar to those who win the fault lottery, and nothing to those who lose.

APPENDICES

APPENDIX 1

COST OF THE U.S. TORT SYSTEM

Year	U.S. Population (millions)	U.S. Workforce (millions)	# of Lawyers (thousands)	CPI Index	National Defense (billions)	Disposable Income (billions)	Gross National Product (billions)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1950	152	62	213	0.72	$ 18	$ 207	$ 286
1951	155	62		.78		226	331
1952	158	62		.79	48	238	348
1953	160	63		.80	54	252	367
1954	163	63	241	.80	49	257	367
1955	166	65		.80	43	275	400
1956	169	66		.81	43	293	422
1957	172	67		.84	47	307	444
1958	175	67		.87	48	319	450
1959	178	68		.87	50	338	488
1960	181	69	286	.89	49	352	506
1961	184	70		.89	51	366	525
1962	186	71		.91	55	387	565
1963	189	72		.92	56	406	597
1964	192	73		.93	57	441	638
1965	194	74		.94	56	476	691
1966	196	76		.97	61	514	756
1967	199	77		1.00	75	548	800
1968	200	79		1.04	84	593	873
1969	202	81		1.10	84	639	944
1970	205	83	355	1.16	84	695	993
1971	207	84		1.21		752	1078
1972	210	87		1.25		810	1186
1973	212	89		1.33		914	1326
1974	214	92		1.48		998	1434
1975	216	94		1.61	94	1096	1549
1976	218	96		1.70	98	1194	1718
1977	220	99		1.81	106	1314	1918
1978	222	102		1.95	115	1474	2164
1979	225	105		2.17	128	1650	2418
1980	228	107	542	2.47	149	1824	2632
1981	230	109		2.72	175	2048	2958
1982	232	110		2.89	204	2176	3069
1983	234	111		2.98	214	2340	3305
1984	236	113	614	3.11	224	2578	3661
1984/1950	1.55	1.82	2.87	4.30	12.21	12.47	12.77
1984/1950*					2.83	2.89	2.96

Notes:

* The second ratio of 1984 to 1950 values represents the change in "real dollars". (Gross ratio/Change in CPI)

(5) National Defense ratios for 1984/1952 are 4.684 (Gross) and 1.080 (in real dollars)

Data are from the *1985 Statistical Abstract Of The United States* and the *Historical Statistics Of The United States*, published by U.S. Bureau of the Census.

COST OF THE U.S. TORT SYSTEM APPENDIX 1

Year	Total Govt. Expend	Education Expend.	Workers' Compensation Costs	Social Welfare Expend.	Tort System Costs	Public Welfare Expend.	Total Govt. Health Expend.	Social Insurance Expend.
				[billions]				
	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
1950	$ 70	$ 6.7	$ 1.1	$ 23	$ 1.7	$ 2.5	$ 3.1	$ 4.9
1951			1.3		2.2			
1952	100		1.4		2.5			
1953	110		1.5		2.8			
1954	111		1.4		3.0			
1955	111		1.5		3.3			
1956	116		1.6		3.7			
1957	125		1.8		4.3			
1958	135		1.9		4.6			
1959	146		2.0		5.0			
1960	151	17.6	2.1	52	5.2	4.1	6.4	19.3
1961	165		2.3		5.4			
1962	176		2.4		5.7			
1963	185		2.6		6.3			
1964	196		2.8		6.9			
1965	205	28.1	3.1	77	7.6	6.3	9.5	28.1
1966	225		3.5		8.3			
1967	258		3.9		9.1			
1968	283		4.2		10.1			
1969	308		4.6		11.4			
1970	330	50.9	5.2	146	13.2	16.5	25.4	54.7
1971			6.2		14.4			
1972		59.4	7.5	191	15.1	26.1	33.4	74.8
1973		64.7	9.5	214	16.6	28.7	36.7	86.2
1974		70.5	10.6	239	18.2	31.5	41.5	99.0
1975	560	80.0	12.1	290	21.7	41.3	52.3	123.0
1976	625	87.7	15.0	332	25.9	48.7	60.0	145.7
1977	682	93.9	18.1	361	30.1	53.3	67.4	160.9
1978	746	101.5	20.9	395	33.1	59.4	77.2	174.9
1979	832	109.3	24.8	430	37.4	64.3	86.8	194.3
1980	959	121.0	25.7	492	41.3	71.8	100.3	229.7
1981	1110	128.1	26.3	550	45.8	82.4	115.9	287.4
1982	1231	133.9	25.3	592	51.0	80.8	130.3	300.7
1983	1348	147.0	27.5	655	56.4	90.1	146.0	341.9
1984	1465	161.5	32.5	725	66.5	100.4	163.6	388.8
1984/1950								
	20.92	24.10	30.75	30.94	38.55	40.22	53.38	78.58
1984/1950*								
	4.83	5.61	7.14	7.16	8.95	9.33	12.39	18.24

Notes:

* The second ratio of 1984 to 1950 values represents the change in "real dollars". [Gross ratio/Change in CPI]

(5) National Defense ratios for 1984/1950 are 4.654 [Gross] and 1.080 [in real dollars]

Data are from the 1985 Statistical Abstract Of The United States and the Historical Statistics Of The United States, published by U.S. Bureau of the Census.

COST OF THE U.S. TORT SYSTEM

APPENDIX 2

Summary of All Tort System Costs

Year	Liability Insurance Cost	Medical Malpractice Self-Insured	Captives & Self-Insurance Cost	Total Cost
		(millions)		
(1)	(2)	(3)	(4)	(5)
1930	$ 388	$ 0	$ 0	$ 388
1931	378	0	0	378
1932	329	0	0	329
1933	321	0	0	321
1934	348	0	0	348
1935	376	0	0	376
1936	408	0	0	408
1937	450	0	0	450
1938	437	0	0	437
1939	438	0	0	438
1940	474	0	0	474
1941	535	0	0	535
1942	534	0	0	534
1943	513	0	0	513
1944	542	0	0	542
1945	675	0	0	675
1946	978	0	0	978
1947	1213	0	0	1213
1948	1391	0	0	1331
1949	1518	0	0	1518
1950	1726	0	0	1726
1951	2171	0	0	2171
1952	2554	0	0	2554
1953	2839	0	0	2839
1954	2964	0	0	2964
1955	3257	0	0	3257
1956	3713	0	0	3713
1957	4276	0	0	4276
1958	4612	0	0	4612
1959	4970	0	0	4970
1960	5192	0	0	5192
1961	5401	0	0	5401
1962	5712	0	0	5718
1963	6295	0	0	6295
1964	6909	0	0	6909
1965	7558	0	0	7558
1966	8314	0	0	8314
1967	9137	0	0	9137
1968	10079	0	0	10079
1969	11382	0	0	11382
1970	13174	0	0	13174
1971	14302	0	94	14396
1972	14949	0	196	15146
1973	16228	0	379	16607
1974	17563	0	622	18185
1975	20724	0	947	21671
1976	24427	0	1439	25866
1977	27925	95	2046	30066
1978	30212	306	2623	33142
1979	33531	597	3298	37426
1980	36422	874	3987	41283
1981	39827	1288	4698	45813
1982	43745	1639	5607	50991
1983	47461	2422	6555	56438
1984	54641	3056	8839	

Notes:

Data are from "Best's Aggregates and Averages."
(5) (2)+(3)+(4)

Liability Insurance Cost
Industry Casualty Companies

Year (1)	Written Premium (millions) (2)	Loss & LAE Ratio (3)	Expense Ratio (4)	Trade Ratio (5)	Liability Insurance Cost (millions) (6)
1930	$ 393	61%	38%	99%	$ 389
1931	388	60	37	97	378
1932	332	61	38	99	329
1933	331	60	37	97	321
1934	358	62	35	97	348
1935	388	62	35	97	376
1936	435	59	34	94	408
1937	486	57	35	92	450
1938	479	55	36	91	437
1939	481	54	36	91	438
1940	510	56	36	92	474
1941	577	56	36	92	535
1942	594	50	39	89	534
1943	545	54	40	94	513
1944	597	53	37	90	542
1945	684	63	36	99	675
1946	925	71	35	106	978
1947	1227	64	34	99	1213
1948	1450	61	34	96	1391
1949	1613	60	34	94	1518
1950	1753	64	34	98	1726
1951	2084	71	33	104	2171
1952	2515	69	32	102	2554
1953	2982	63	32	95	2839
1954	3155	61	32	93	2964
1955	3338	65	32	97	3257
1956	3619	70	33	103	3713
1957	4035	74	32	106	4276
1958	4443	73	31	104	4612
1959	4951	70	31	100	4970
1960	5277	68	31	98	5192
1961	5504	67	31	98	5401
1962	5819	67	31	98	5712
1963	6225	70	31	101	6295
1964	6688	73	30	103	6909
1965	7379	73	29	103	7558
1966	8187	73	28	102	8314
1967	8947	74	28	102	9137
1968	9768	76	28	103	10079
1969	10957	77	27	104	11382
1970	12716	77	26	104	13174
1971	14274	74	26	100	14302
1972	15145	72	27	99	14949
1973	15821	76	27	103	16228
1974	16415	79	28	107	17563
1975	18880	83	26	110	20724
1976	23463	79	25	104	24427
1977	28589	73	24	97	27925
1978	31083	72	25	97	30212
1979	33398	74	25	100	33531
1980	34746	78	26	104	36422
1981	35674	84	26	110	39827
1982	37504	88	27	115	43745
1983	38714	91	27	118	47461
1984	43438	97	26	123	54641

Notes:

Data are from "Best's Aggregates and Averages."
(3), (4), (5) - All ratios are premium-weighted averages of stock and mutual company ratios.

COST OF THE U.S. TORT SYSTEM

APPENDIX 4

Liability Insurance Cost

Medical Malpractice: Self-Insured

Year (1)	Discounted Physicians' Cost (2)	Ultimate Physicians' Cost (millions) (3)	Best's Cost (4)	Self-Insured Cost (5)
1975	$ 603	$ 802	$1054	$ 0
1976	746	992	1243	0
1977	943	1254	1159	95
1978	1168	1554	1247	306
1979	1468	1953	1356	597
1980	1887	2509	1635	874
1981	2333	3102	1815	1288
1982	2904	3863	2223	1639
1983	3589	4774	2352	2422
1984	4449	5917	2861	3056

Notes:

(2) Estimate based upon a study of national exposures and experience.
(3) (2) x 1.33
(5) Minimum of [(3) - (4)] and zero.

Captives and Self-Insurance

APPENDIX 5

Year (1)	Industry Comm. Lines Liability Cost (millions) (2)	Cost of Captives [% of (2)] (3)	Cost of Self-Insurance [% of (2)] (4)	Total Captive & Self-Insurance Cost (millions) (5)
1970	$ 5270	0.0%	0.0%	$ 0
1971	5721	0.0	1.6	94
1972	5880	0.0	3.3	196
1973	6400	1.0	4.9	378
1974	7280	2.0	6.6	622
1975	8444	3.0	8.2	947
1976	10381	4.0	9.9	1439
1977	12388	5.0	11.5	2046
1978	13704	6.0	13.1	2623
1979	15138	7.0	14.8	3298
1980	16319	8.0	16.4	3987
1981	17355	9.0	18.1	4698
1982	18871	10.0	19.7	5607
1983	20257	11.0	21.4	6556
1984	25255	12.0	23.0	8839

Notes:

(2) From "Best's Aggregates and Averages".
(3) Based upon estimates published in "Captive Insurance Company Report," October 1983. [(1982) = 10%]
(4) Based upon the "Cost of Risk" study. [(1984) = 23%]
(5) (2) x [(3)+(4)]

COST OF THE U.S. TORT SYSTEM

APPENDIX 6

Projection of Total Insurance Costs

Workers' Compensation

Year (1)	Private Insurance Cost (millions) (2)	Ratio of Non-Priv. to Priv. (3)	Total Insurance Cost (millions) (4)
1930	$ 219	60.4%	$ 351
1931	185	60.4	296
1932	135	60.4	217
1933	131	60.4	211
1934	154	60.4	248
1935	177	60.4	284
1936	206	60.4	331
1937	237	60.4	381
1938	222	60.4	355
1939	218	60.4	349
1940	230	60.4	370
1941	296	60.4	475
1942	401	60.4	643
1943	442	60.4	708
1944	436	60.5	699
1945	425	60.4	681
1946	451	60.4	724
1947	549	60.6	881
1948	613	60.3	982
1949	618	60.2	991
1950	657	61.2	1059
1951	792	59.5	1263
1952	858	59.9	1371
1953	927	60.5	1487
1954	876	62.1	1420
1955	922	62.8	1501
1956	1001	62.1	1623
1957	1096	60.7	1762
1958	1140	64.2	1872
1959	1245	60.6	2000
1960	1348	59.9	2155
1961	1425	61.5	2301
1962	1506	61.1	2426
1963	1645	60.2	2636
1964	1754	59.6	2799
1965	1902	61.4	3069
1966	2175	61.4	3512
1967	2401	60.6	3857
1968	2592	60.4	4157
1969	2888	60.5	4638
1970	3166	64.4	5206
1971	3514	77.8	6246
1972	4028	86.4	7509
1973	4660	103.0	9462
1974	5468	94.6	10640
1975	6254	92.8	12059
1976	7851	90.8	14976
1977	9694	86.5	18075
1978	11232	86.3	20927
1979	12690	95.3	24789
1980	13313	92.8	25668
1981	13754	91.5	26337
1982	13108	93.2	25327
1983	14271	92.5	27473
1984	16920	92.4	32555

Notes:

(2) From Appendix 8
(3) From Appendix 7 (Ratios from 1930 to 1948, and 1981 to 1984 are estimates.)
(4) (2) x (1+(3)).

COST OF THE U.S. TORT SYSTEM

Derivation of Total Insurance Costs

Workers' Compensation

Year	Private Benefits (millions)	Govt. Benefits (millions)	Self-Ins. Benefits (millions)	Total Non-Priv. Benefits (millions)	Ratio of Non-Priv. to Priv.	Private Insurance Cost (millions)	Total Insurance Cost (millions)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1950	$ 381	$ 149	$ 85	$ 233	61.2%	$ 656.7	$ 1058.7
1951	444	170	94	265	59.5	791.6	1263.0
1952	491	193	101	294	59.9	857.8	1371.5
1953	524	210	107	317	60.5	926.7	1487.1
1954	541	226	110	336	62.1	875.8	1419.8
1955	563	239	115	353	62.8	921.8	1500.6
1956	618	259	125	384	62.1	1001.5	1623.5
1957	661	271	130	401	60.7	1096.4	1762.2
1958	649	285	132	417	64.2	1139.7	1871.9
1959	753	315	141	456	60.6	1245.1	1999.8
1960	810	325	160	485	59.9	1348.0	2155.3
1961	851	347	176	523	61.5	1424.9	2301.2
1962	924	371	194	565	61.1	1505.8	2426.3
1963	988	388	207	595	60.2	1644.9	2635.6
1964	1070	412	226	638	59.6	1753.7	2799.2
1965	1124	445	244	690	61.4	1902.1	3060.5
1966	1239	486	275	761	61.4	2175.4	3512.0
1967	1363	524	303	826	60.6	2401.3	3857.3
1968	1482	556	338	894	60.4	2592.5	4157.4
1969	1641	607	386	993	60.5	2889.3	4637.6
1970	1843	755	433	1187	64.4	3166.2	5205.8
1971	2005	1098	460	1559	77.8	3513.9	6245.9
1972	2179	1379	504	1883	86.4	4028.3	7509.6
1973	2514	1998	592	2590	103.0	4660.4	9461.9
1974	2971	2086	724	2810	94.6	5468.0	10640.4
1975	3422	2324	852	3176	92.8	6254.0	12058.9
1976	3976	2570	1039	3608	90.8	7850.7	14975.7
1977	4629	2750	1252	4002	86.5	9694.3	18075.1
1978	5256	3039	1497	4537	86.3	11232.3	20927.3
1979	6157	4022	1848	5870	95.3	12690.2	24789.5
1980	7023	4332	2186	6518	92.8	13312.8	25668.2

Notes:

(2), (3), (4) From the "1982 Social Security Bulletin." (SSA #13-11700)
(5) (3)+(4)
(6) (5)/(2)
(7) From Appendix 8
(8) (7)x(1+(6))

COST OF THE U.S. TORT SYSTEM

Private Insurance Costs

Workers' Compensation

Year (1)	Written Premium (billions) (2)	Loss Ratio (3)	Expense Ratio (4)	Trade Ratio (5)	Effective Cost (billions) (6)
1930	$0.2	76.3%	29.2%	105.5%	$0.2
1931	0.2	80.1	30.1	110.2	0.2
1932	0.1	80.1	30.7	110.8	0.1
1933	0.1	81.9	28.8	110.7	0.1
1934	0.2	72.3	25.1	97.4	0.2
1935	0.2	70.4	24.5	94.9	0.2
1936	0.2	68.7	23.5	92.2	0.2
1937	0.3	64.0	24.4	88.4	0.2
1938	0.3	62.0	26.0	88.0	0.2
1939	0.2	61.6	26.1	87.7	0.2
1940	0.3	61.8	26.1	87.9	0.2
1941	0.3	64.4	24.6	89.0	0.3
1942	0.4	66.6	22.5	89.1	0.4
1943	0.5	66.6	22.6	89.2	0.4
1944	0.5	65.8	23.0	88.8	0.4
1945	0.5	66.0	23.0	89.0	0.4
1946	0.5	65.7	24.7	90.5	0.5
1947	0.6	61.6	23.7	85.3	0.5
1948	0.7	60.2	23.5	83.7	0.6
1949	0.7	62.3	23.8	86.1	0.6
1950	0.7	70.5	23.7	94.2	0.7
1951	0.8	74.3	22.6	96.9	0.8
1952	0.9	71.5	21.9	93.5	0.9
1953	1.0	68.6	21.3	89.9	0.9
1954	1.0	63.9	22.3	86.2	0.9
1955	1.0	66.2	22.8	89.0	0.9
1956	1.1	67.4	22.8	90.2	1.0
1957	1.2	68.4	23.0	91.4	1.1
1958	1.2	71.1	23.2	94.2	1.1
1959	1.3	73.3	22.7	96.0	1.2
1960	1.4	72.6	22.4	95.0	1.3
1961	1.5	73.7	22.4	96.0	1.4
1962	1.6	71.6	22.3	93.9	1.5
1963	1.7	72.9	22.4	95.3	1.6
1964	1.9	71.9	22.0	93.9	1.8
1965	2.0	71.5	21.6	93.1	1.9
1966	2.3	72.0	20.7	92.7	2.2
1967	2.6	71.8	20.5	92.3	2.4
1968	2.9	69.7	20.0	89.7	2.6
1969	3.2	70.5	19.7	90.3	2.9
1970	3.5	71.4	19.3	90.7	3.2
1971	3.7	76.5	19.5	96.0	3.5
1972	4.1	78.1	20.0	98.2	4.0
1973	4.8	77.0	19.8	96.8	4.7
1974	5.5	80.3	19.6	99.9	5.5
1975	6.2	82.2	18.9	101.1	6.3
1976	7.5	86.6	17.6	104.2	7.9
1977	9.4	86.9	16.7	103.6	9.7
1978	11.3	83.0	16.4	99.4	11.2
1979	13.2	79.6	16.8	96.4	12.7
1980	14.2	76.1	17.4	93.5	13.3
1981	14.6	75.1	19.0	94.1	13.8
1982	13.9	73.4	20.6	94.0	13.1
1983	14.0	79.9	22.0	101.9	14.3
1984	15.1	90.8	21.2	112.0	16.9

Notes:

Data are from "Best's Aggregates and Averages."
(3), (4), (5) All ratios are premium-weighted averages of Stock and Mutual companies.

Representative **Lungren**. Thank you. I thank all three of you for your testimonies.

Mr. Kakalik, with respect to your study, you talk about litigated cost. Are you referring to only those cases that are finalized by a jury or a judge's verdict or are you also including cases that start in a litigation and are, at some point in time, settled before final resolution by the jury?

Mr. **Kakalik**. We included everything that was filed as a lawsuit. We excluded all insurance claims where no lawsuit was filed.

Representative **Lungren**. As long as there was a filing?

Mr. **Kakalik**. That's correct. As you are aware, the court and jury verdicts are a small fraction of the total number of lawsuits. Something on the order of 5 percent.

Representative **Lungren**. One of the things that I recall from my practicing regards joint and several liability—particularly in medical malpractice cases. Often in such cases a plaintiff's attorney feels obligated to sue everyone possible and, at some point in time, when the plaintiff's attorney realizes that a particular defendant is really not involved in the case, the attorney generally will go to the defense attorney and say, "What will you give me to let you out of the case?"

And the problem is that there is no incentive for the plaintiff's attorney to allow the defendant out of the case without receiving something in return. Many a time, I have gone to the judge in his chambers and had the judge say to me:

> Look, we know that your client is not responsible for this, but it's going to cost you and the insurance company $10,000 to complete the case. Throw in a few thousand dollars.

And, in a sense, it's legal blackmail. In a sense, you have the responsibility to your insurance company and to your client in trying to minimize the cost. You feel an obligation to go back to them and present that to them.

And, oftentimes, you just get out of the case. And that's one of the costs that I don't think is fully understood by some folks. It never appears in the jury room.

Mr. **Kakalik**. That's correct.

Representative **Lungren**. There is a cost factor in getting out of the case.

In your study, you indicated there is a difference in auto and nonauto tort litigation. You mentioned that perhaps the difference exists because nonauto litigation is more complex or more complicated than auto litigation. This is not true for every case, as you know. There are run-of-the-mill nonauto cases as well.

Mr. **Kakalik**. That's correct.

Representative **Lungren**. Is there anything that shows any other reason why you may find that large a difference in defense cost?

Mr. **Kakalik**. I think the major reason is that the automobile cases are less complex on the average. I know there are exceptions, of course, that hence require less defense effort.

There is another possibility and that is that the insurance industry is striving to control their defense costs, and they may have been more successful on the auto cases. They may be more routine and less diverse than the other tort cases.

Representative **Lungren**. I wonder if the fact some States have no fault auto insurance has anything to do with that.

Mr. **Kakalik**. Well, we have included any of the costs of lawsuits in no fault States.

Representative **Lungren**. In your prepared statement, you discuss net compensation as a share of total costs. I want to ask you this question.

If time is included, is it correct that your analysis shows net compensation amounting to only about 45 percent of the total expenditure?

Mr. **Kakalik**. That's correct.

Representative **Lungren**. That does include time off?

Mr. **Kakalik**. Yes.

Representative **Lungren**. Your numbers suggest and you state that the cost of delivering the compensation is apparently greater than the compensation itself.

Mr. **Kakalik**. That's correct.

Representative **Lungren**. Initially, when this information is presented to someone, they would say, "Gee, that must be a very inefficient system."

Have you or your institute taken the time to analyze the system to determine if it is an efficient system or if your numbers just happen to be a description of a system that serves a legitimate purpose in society?

Mr. **Kakalik**. Well, as I said, we undertook this study to shed some light on what the facts really were. We did not try to make any judgment as to whether the system was efficient or inefficient.

We let the numbers speak for themselves. However, I would like to point out that efficiency is really a relative matter. The question is, Is reform that someone might be considering of the tort system more or less efficient than the current system?

Representative **Lungren**. I guess I would ask that question of the other two panelists. I know we ought to be careful when considering whether another system will be more or less efficient, but would either of you care to comment on just the question of the efficiency of the present system in terms of your analysis?

Mr. **Schotter**. Well, let me just make a clarification about efficiency and how you might measure it, since it seems as if what we're talking about here is taking a ratio to measure efficiency, the ratio being the net compensation going to claimants; namely, the amount they put in their pocket on the top, and on the bottom you have the cost—the administrative costs plus the net compensation.

I think that's somewhat the ratio Mr. Kakalik is talking about. I think there is something you have to worry about when you look at that ratio, and that is that if jury awards just increase arbitrarily so they become very, very large, given the same amount of lawyer costs that go into it, that ratio looks better and better; namely, you want that ratio to be one. You want every dollar spent in the system to go right into the pockets of the claimants. If awards just increase arbitrarily, the ratio tends to be to one. So I think there's something to worry about by looking at that ratio.

I think what you have to really look at as the correct ratio is how costly is it to deliver $1 of compensation that should be going to claimants?

So the ratio really that I would propose is, on the top, you should have the administrative costs plus the allocative costs. That's truly the cost of the system. And then, on the bottom, you should have that amount of money awarded which really reflects the economic damage of these torts.

Representative LUNGREN. Can you tell us how we might be able to quantify allocative costs?

Mr. SCHOTTER. Well, that's a drawback to what I just said. The allocative costs, of course, are very hard to specify. What I said at the end of my testimony is I don't think a type of study like this, where you estimate all the allocative costs in the system of the whole nation, is feasible.

But it might be realistic to try to get somebody to look at just one product—one representative product—and to try to see the relevant magnitude. You might find allocative costs that far outstrip administrative costs.

They are bigger, and I think from what you said about California, I think those are the costs that we're really worried about, and that's why we have the legislatures worried, not necessarily the administrative costs.

Represntative LUNGREN. Mr. Sturgis, do you have a comment on the question of efficiency?

Mr. STURGIS. Yes. If one views this as a compensation system or a system to compensate victims, in our judgment, it is an extremely inefficient system.

However, as I'm sure you're aware, sir, there are arguments made that the tort system serves other purposes besides a compensation system, such as an incentive to behave properly in society and not allow unsafe conditions to exist in the premises or products, or what have you.

So while my presentation is a quantitative one dealing with cost, there are other issues as well.

Representative LUNGREN. I wonder if any of you in your studies have sensed whether there has been any increase in the number of lawsuits filed or in the costs associated with tort litigation?

I believe, in about 1981 or 1982, when the Supreme Court basically said that attorneys can no longer hide behind their profession and refuse to allow members of their profession to advertise.

Representative DAUB. Would the gentlemen yield?

Representative LUNGREN. I would be happy to yield.

Representative DAUB. You mean the commercial we see on TV every night now that says, "Hi, been hurt lately?" [Laughter.]

Representative LUNGREN. Yes, that's the one I'm talking about. I wonder if you have seen whether there's been any impact at all? I mean, I always felt we needed to provide more information to the consumer, but I guess a lot of people are offended by some of the ads we see.

Mr. KAKALIK. I don't know the cause of the trend, but the data show that between 1981 and 1984, the number of tort lawsuits filed in courts of general jurisdiction grew 3.9 percent, or if you adjust for population growth, they grew at 3.0 percent per year between 1981 and 1984.

Representative LUNGREN. I am, however, aware of a conflict with that information. The State Court Institute in Williamsburg did a study which suggests that claims have actually fallen.

Mr. KAKALIK. Yes, we have been in contact with Mr. Roper at the Center for State Courts. The statistic you're talking about refers to a preliminary number for all civil filings. It is not the number of torts. His number for torts showed only a slightly different growth rate than ours.

If I said 4 percent, I think he said 7. And I think the difference between 4 and 7 percent annual growth between 1981 and 1984 was primarily a difference in the choice of which States we thought had reliable data.[1]

Representative LUNGREN. In the discussion you had with him, did you come away with the idea that he holds a contradictory position relative to the one articulated in your study?

Mr. KAKALIK. No. I think it's entirely consistent. Both his study and our study show a slow of growth rate in the number of tort lawsuits.

Representative LUNGREN. Congressman Hal Daub of Nebraska, who has had more than passing experience in the courtroom.

Representative DAUB. Thank you. Yes, I enjoy the subject. I think it's a very complicated one and when we address it, it will require information like the kind the three of you bring to this committee this morning. I want to commend Mr. Lungren for his interest and for his creativity and persistence in allowing the Joint Economic Committee to pursue the subject. This should help us understand the economic problems in actuarial calculations. Then perhaps we can figure out the breakdown between automobiles and homeowners, between property and casualty, between errors and omissions, and between the boards of directors' liability and the amount of claims which may be paid for product insurance or for municiple governments.

I think there is a broad range of property and casualty problems that could be lumped into the tort file to help us understand what the breakdown might be in comparative terms. This can be very useful, so I want to thank the gentleman from California for what he is doing.

I think it will add a good deal of information to the collective wisdom of Congress as it proceeds next year in dealing aggressively with some kind of reform.

Let me just ask a general question. Do the three of you think there is a problem or is it much ado about nothing?

Looking at it from a statistical point of view, is there a problem of increasing premiums and decreasing coverage?

Don't take on the lawyers or the insurance companies or the court system, you know, but is there a problem or are we just responding to headlines and just seeing some of the extremes on the right and the left when really everything is going just fine?

Any of you or all of you may answer.

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[1] Upon checking after the hearing, Mr. Kakalik learned that the comparable National Center for State Courts number was 2 percent.

Mr. **Sturgis**. I think, yes, there is a problem. I think from the point of view of my practice, it ultimately falls on the consumer and on industry, the noninsurance industry, that is. Certainly the insurance industry has had some problems with their earnings, but they have ways to correct that. And as you say, the actuarial pricing. But that pricing in turn does have serious problems for self-insurers and not only in terms of affordability, but a very real problem today of not being able to find coverage at any price.

So, yes, I believe it is a problem.

Mr. **Schotter**. Given that I am an economist, I tend to worry more about the incentives that the system is creating.

Representative **Daub**. As an economist, do you have to have liability insurance?

Mr. **Schotter**. Not yet. [Laughter.] But maybe as a result of today I might.

I tend to worry more about the incentive effects, and I think there is a problem. I think in terms of administrative costs there is a problem because we are spending lots of money to administer the system.

But I think even a more severe problem is the fact that we are missing lots of opportunities out there because of the kinds of incentives that we are seeing, and we are not getting products introduced that people might benefit from. We are not getting the kind of medical care we might because people are behaving in a way that doesn't necessarily reflect the true damages that could be done by a medical practice.

I think that is the loss, and I think that that loss is a big one, and I think that is something to worry about in addition to what we are talking about today, which, of course, is substantial but it is only a part.

Representative **Daub**. Mr. Kakalik.

Mr. **Kakalik**. We are striving very hard to be objective and impartial, and we are trying to shed some light on the scene by providing the facts without making any judgments. We are going to leave the judgments to you people.

Representative **Daub**. Well, I appreciate that, that is useful in the wind and storm of this issue. I am concerned about the issue of international competitiveness as well as the whole cost and allocation of resources which lets foreign manufacturers come in without the burden of the liability system, of course, and without insurance costs. After all, if we are subject to such costs overseas, our manufacturers' costs are reallocated as a resource.

So I think the answer to that question for both of us was a very constructive addition for the record.

I am concerned about the administrative cost issue. I tried lawsuits, as did my colleague Dan Lungren. I sued people and I defended people. I think I probably have been in the courtroom and been involved in just about every kind of court case, civil actions, and so forth; and I particularly notice from the tables an interesting thing I hadn't thought about, that workmen's compensation on the personal injury side of the tort issue tends to have really exploded relative to other sources of recovery.

Do you think maybe there is a duplication that is going on here that is not being taken into account in a correct way, if the suit's objective is to make the injured party whole? Does anybody have any thoughts about that, that we have a duplication, a windfall, double recovery, or the system paying twice?

Mr. **Sturgis**. I think there is very little duplication between the workmen's compensation system and the tort system in the case of the injured worker.

Representative **Daub**. Seems like 20 years ago we didn't do the proportion of either one of them that we are doing now.

Do any of you have any information on the property casualty basis broken down to the percentage of premiums that are paid for each category of liability insurance that you can point out? Has anybody seen any information or have you done any work that shows how much is automobile, how much is house, and how much is the total premimums that are paid?

Mr. **Kakalik**. Our report has the actual compensation paid by line of insurance.

Representative **Daub**. How about the cost of the premiums and the actual revenues of the insurance industry?

Mr. **Kakalik**. I do not have the numbers in our report—our study was focusing on litigation.

Representative **Daub**. Could you furnish for the record the revenue numbers, if you have them, for the same line items?

Mr. **Kakalik**. I think Bob Sturgis actually has those.

Mr. **Sturgis**. Yes, we have that information. I mean, there is backup to our study. It is not contained in the study per se, but it is readily available.

Representative **Daub**. Would the chairman like to have that information?

Representative **Lungren**. Yes.

[The following information was subsequently supplied for record:]

Exhibit 3
Sheet D
25-Oct

AMERICAN INSURANCE ASSOCIATION

Costing of the United States Tort System

Liability Insurance Cost

Industry Casualty Companies (1973 - 1984)

Year ===== (1)	Written Premium ======= (2)	Loss & LAE Ratio ========== (3)	Expense Ratio ======= (4)	Trade Ratio ===== (5)	Effective Liability Cost ========= (6)
1973	$15,820,738	75.7	26.9	102.6	$16,227,891
1974	16,415,391	79.4	27.6	107.0	17,562,616
1975	18,880,025	83.4	26.3	109.8	20,773,907
1976	23,463,166	79.0	24.9	103.9	24,426,810
1977	28,589,268	73.2	24.2	97.4	27,925,419
1978	31,082,411	71.7	25.0	96.7	30,212,144
1979	33,638,374	74.2	25.4	99.7	33,530,734
1980	34,745,706	78.0	25.8	103.9	36,422,322
1981	35,674,419	84.0	26.5	110.4	39,827,204
1982	37,503,817	88.2	27.0	115.1	43,744,735
1983	39,714,416	90.8	26.9	117.7	47,451,542
1984	43,438,224	97.0	26.4	123.5	54,643,865

Notes:
(2),(6) Last three 000 omitted.
All data are from "Best's Aggregates and Averages."

Appendix C
Sheet 1
25-Oct

AMERICAN INSURANCE ASSOCIATION

Costing of the United States Tort System

Industry Casualty Companies: 1973-1984

Written Premium

Year ====== (1)	Home-owners ========= (2)	CMP ========= (3)	Misc. Liability ========= (4)	Med. Malpr. ======== (5)	PP Auto Liability ========= (6)	Comm. Auto Liability =========== (7)	Total Industry Liability ========= (8)
1973	$3,770,237	$2,517,664	$2,741,497		$9,525,014	$2,296,028	$15,820,728
1974	4,156,088	2,856,828	2,989,837		9,688,569	2,321,486	16,415,391
1975	4,729,381	3,176,373	3,085,226	$895,435	10,775,475	2,539,220	18,880,025
1976	5,688,547	4,051,785	4,251,299	1,132,790	12,899,103	3,152,478	23,463,166
1977	6,795,492	4,970,508	5,845,075	1,247,798	15,085,260	3,892,498	28,589,268
1978	7,792,293	5,829,795	6,490,064	1,215,789	16,047,775	4,335,232	31,083,411
1979	8,791,661	6,666,823	6,612,474	1,204,326	17,385,444	4,716,903	33,398,374
1980	9,620,753	6,885,159	6,414,678	1,275,603	18,590,373	4,728,913	34,745,706
1981	10,779,626	6,869,978	6,046,292	1,338,299	19,649,912	4,745,262	35,674,419
1982	11,746,998	7,009,335	5,668,459	1,490,270	21,487,468	4,738,978	37,503,817
1983	12,511,830	7,292,720	5,679,295	1,568,001	23,343,939	4,736,128	39,714,416
1984	13,212,762	8,286,962	6,479,268	1,774,754	24,809,382	5,407,281	43,438,224

Notes:

Last three (000) omitted.

All data is from "Best's Aggregates and Averages."

(2) Homeowners business consists of an estimated 10% liability coverage.

(3) The percentage of Commercial Multi-peril business that represents liability coverage. varies from 35% in 1975, to 44% in 1984.

(4),(5),(6),(7) These lines consist entirely of liability coverage.

(8) Includes only liability premiums:

=[(2)x10%]+[(3)xP%]+(4)+(5)+(6)+(7), where P% varies from 35% to 44%.

Appendix C
Sheet 2
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AMERICAN INSURANCE ASSOCIATION

Costing of the United States Tort System

Industry Casualty Companies: 1973-1984

Loss & LAE Ratios (to Earned Premium)

Year ====== (1)	Home-owners ========= (2)	CMP ========= (3)	Misc. Liability ========= (4)	Med. Malpr. ======== (5)	PP Auto Liability ========= (6)	Comm. Auto Liability =========== (7)	Total Industry Liability ========= (8)
1973	59.6	54.3	86.5		74.5	78.3	75.7
1974	72.0	66.6	96.1		75.7	80.2	79.4
1975	77.3	64.3	86.8	101.7	84.2	80.0	83.4
1976	65.4	60.7	79.8	95.4	80.7	77.3	79.0
1977	60.3	53.8	74.4	79.9	75.4	73.2	73.2
1978	60.2	50.8	70.5	88.0	74.5	73.5	71.7
1979	67.5	58.4	70.0	98.9	76.9	77.2	74.2
1980	73.9	62.0	77.4	114.1	78.9	80.4	78.0
1981	70.4	68.8	84.5	120.7	84.8	87.5	84.0
1982	72.5	76.3	97.0	133.7	85.6	94.0	88.2
1983	71.8	82.6	105.6	133.8	86.6	99.8	90.8
1984	74.6	95.4	120.8	144.9	85.6	111.4	97.0

Notes:

Last three 000 omitted.

All data is from "Best's Aggregates and Averages."

(2) Homeowners business consists of an estimated 10% liability coverage.

(3) The percentage of Commercial Multi-peril business that represents liability coverage, varies from 35% in 1975, to 44% in 1984.

(4),(5),(6),(7) These lines consist entirely of liability coverage.

Appendix C
Sheet 3
25-Oct

AMERICAN INSURANCE ASSOCIATION

Costing of the United States Tort System

Industry Casualty Companies: 1973-1984

Total Underwriting Expense Ratios (to Written Premium)

Year (1)	Home-owners (2)	CMP (3)	Misc. Liability (4)	Med. Malpr. (5)	PP Auto Liability (6)	Comm. Auto Liability (7)	Total Industry Liability (8)
1973	33.4	33.8	29.6		25.0	28.0	26.9
1974	33.7	34.3	28.9		26.1	28.1	27.6
1975	32.9	34.1	29.8	16.0	25.1	27.5	26.3
1976	31.8	33.0	26.7	14.3	23.9	25.8	24.9
1977	31.4	32.7	25.2	13.0	23.4	25.1	24.2
1978	31.8	33.3	26.4	14.6	23.9	25.8	25.0
1979	31.1	34.1	27.6	13.7	23.9	27.2	25.4
1980	30.9	35.9	29.2	14.1	23.7	28.5	25.8
1981	31.0	37.3	30.8	14.9	24.0	30.1	26.5
1982	31.0	39.4	31.6	15.5	24.5	31.6	27.0
1983	31.5	40.0	31.9	16.2	24.4	32.2	26.9
1984	31.4	39.1	30.3	16.3	24.2	31.0	26.4

Notes:

Last three 000 omitted.

All data is from "Best's Aggregates and Averages."

(2) Homeowners business consists of an estimated 10% liability coverage.

(3) The percentage of Commercial Multi-peril business that represents liability coverage. varies from 35% in 1975, to 44% in 1984.

(4),(5),(6),(7) These lines consist entirely of liability coverage.

Appendix C
Sheet 4
25-Oct

AMERICAN INSURANCE ASSOCIATION

Costing of the United States Tort System

Industry Casualty Companies: 1973-1984

Trade Ratios

Year ====== (1)	Home-owners ========= (2)	CMP ========= (3)	Misc. Liability ========= (4)	Med. Malpr. ======== (5)	PP Auto Liability ========= (6)	Comm. Auto Liability =========== (7)	Total Industry Liability ========= (8)
1973	92.0	88.1	116.1		99.5	106.3	102.6
1974	105.7	100.9	125.0		101.8	108.3	107.0
1975	106.2	98.4	115.6	117.7	109.3	107.5	109.8
1976	97.2	93.3	106.5	109.7	104.6	103.1	103.9
1977	91.7	86.5	99.6	92.9	98.8	98.3	97.4
1978	92.0	84.1	96.9	102.6	98.4	99.3	96.7
1979	98.6	92.5	97.6	112.6	100.8	104.4	99.7
1980	104.8	97.9	106.6	128.2	102.6	108.9	103.9
1981	101.4	106.1	115.3	135.6	108.8	117.6	110.4
1982	103.5	115.7	128.6	149.2	110.1	125.6	115.1
1983	107.3	122.6	137.5	150.0	111.0	132.0	117.7
1984	106.0	134.5	151.1	161.2	112.8	142.4	123.5

Notes:

Last three 000 omitted.

All data is from "Best's Aggregates and Averages."

(2) Homeowners business consists of an estimated 10% liability coverage.

(3) The percentage of Commercial Multi-peril business that represents liability coverage. varies from 35% in 1975, to 44% in 1984.

(4),(5),(6),(7) These lines consist entirely of liability coverage.

Appendix C
Sheet 5
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AMERICAN INSURANCE ASSOCIATION

Costing of the United States Tort System

Industry Casualty Companies: 1973-1984

Effective Liability Costs (Written Premium x Trade Ratio)

Year ====== (1)	Home-owners ========= (2)	CMP ========= (3)	Misc. Liability ========= (4)	Med. Malpr. ======== (5)	PP Auto Liability ========= (6)	Comm. Auto Liability =========== (7)	Total Industry Liability ========= (8)
1973	$3,506,293	$2,218.062	$3,182,873		$9,477,389	$2,440,678	$16,227,891
1974	4,392,985	2,882,539	3,737,296		9,862,963	2,514,169	17,562.616
1975	5,022,603	3,125,551	3,566,521	$1,053,927	11,777,594	2,729,662	20,723,907
1976	5,529,268	3,780,315	4.527.632	1,242.671	13,492,462	3,250,205	24.426,910
1977	6.231,466	4,299,489	5,821,695	1,159,204	14,904,237	3,826,326	27,925,419
1978	7,168,910	4,902,858	6.268.872	1,247,400	15,791,011	4,304.885	30,212,144
1979	8,668,578	6,166,810	6,453,775	1,356,071	17.524.528	4,924,447	33,530,734
1980	10,292,149	6,740,571	6.839,047	1,635,323	19,073,723	5.149,786	36,422,322
1981	10,930,541	7.289,047	6,971,375	1,814,733	21,379,104	5,580,428	39.827,204
1982	12,158,143	8,109,858	7.289.638	2,223,483	23,657,702	5,952.156	43,744,935
1983	12,924,720	9,940,875	7.809,031	2,352,002	25,911,772	6,251,689	47,461,542
1984	14,005.529	11,145,964	9,790.174	2,860,903	27,984,983	7.699,968	54,640,805

Notes:

Last three 000 omitted.

All data is from "Best's Aggregates and Averages."

(2) Homeowners business consists of an estimated 10% liability coverage.

(3) The percentage of Commercial Multi-peril business that represents liability coverage.
varies from 35% in 1975, to 44% in 1984.

(4),(5),(6),(7) These lines consist entirely of liability coverage.

(8) Includes only liability premiums:
=[(2)x10%]+[(3)xP%]+(4)+(5)+(6)+(7), where P% varies from 35% to 44%.

Representative **Daub**. I would like to have that made part of the record, if both of you could furnish the data you have on the actual contribution to the total property and casualty system by industry or by subject matter--automobiles, housing, malpractice, errors and omissions.

And the reason I am interested in the correlation is that I wonder if the Congress, for example, would go off on a tangent and deal just with product liability. I wonder if we are dealing with 10 percent of the problem, 20 percent of the problem, or 50 percent of the problem.

Mr. **Kakalik**. I am sorry, would you repeat that?

Representative **Daub**. My interest is—I don't know whether this will correlate or not, but I am curious, as we try to assess the magnitude of the problem, how much of the premium base is in product liability, how much of the premium base is in the accident portion of automobile coverage, how much of the premium base is in board of directors' errors and omissions, and how much of the premium base is in malpractice and professional insurance and municipalities?

In other words, on the info side of the insurance industry, how much is being paid by purchases; then how much is being paid out in those lines, and to get to this administrative thing and to the defense, to break down the costs inside the system?

Mr. **Kakalik**. The litigation portion of the total compensation paid is nontrivial.

Representative **Daub**. Is nontrivial?

Mr. **Kakalik**. Out of all compensation paid by the insurance industry on liability claims, 46 percent of the compensation was through lawsuits and 54 percent was through claims not in lawsuit.

Representative **Daub**. Maybe you can see a little bit of what I am looking for. There are accusations out there that the insurance industry is ripping off the system. One set of figures says 83 percent or 86 percent of the total cost of all of this liability business is borne by the insurance company.

Is it truly that, or is it something less or something more?

Mr. **Sturgis**. Well, I could respond to your request. I would suggest that we talk to staff after the close of this hearing because there are lots of different ways to categorize, and some of the categories you listed will not normally come out of the compensational insurance costs.

For example, municipal liability or product liability would not.

Representative **Daub**. Have any of you done any studies on who is going where now for economic reasons, who has decided to self-insure, by industry or by subject matter? Have you studied at all which industries seem to be trying to do more of their own self-insuring by umbrella coverage, what premiums are doing to umbrella coverage?

Mr. **Kakalik**. In making our estimates, we had to look at the fraction of the total that is self-insured or insured through some means other than the conventional, traditional insurance industry, and there have been studies done in the medical malpractice area, in the commercial auto liability area, and so forth.

We do delineate that fraction in the report. The area where there is the most coverage outside the traditional insurance industry is probably medical malpractice and also government liability cases.

Representative DAUB. What do you mean by self-insurance? Just going bare, just risking it, or actually forming a pool?

Mr. KAKALIK. Well, in medical malpractice areas there are a number of different mechanisms other than going bare—catastrophic funds and joint underwriting associations that are really not traditional insurance organizations.

Representative DAUB. Mr. Sturgis has an estimate of $68 billion. Do the other two of you understand that counts everything—cases filed or not filed, cases not diverted, cases that don't go to verdict? Any impression on that by the other two of you?

Mr. SCHOTTER. Well, I think that our studies are comparable in the sense that we approached the problem with the same methodology. I am not 100-percent sure of exactly all the costs that go into the $68 billion figure, and I have a feeling that there are just different things being counted there.

Mr. KAKALIK. The Tillinghast number obviously should be much higher than mine because he is including all claims in addition to lawsuits, and he is including the cost of operating the insurance system above and beyond the cost of litigation.

Representative DAUB. I guess I worry a lot about how you take into account the process of a physician, for example, engaging in defensive bed handling. I don't know how you account for that in terms of what that might mean to the cost or to the actuarial calculation for the risk incurred and premium paid and then the payouts for negligence assessed.

Mr. SCHOTTER. Those kinds of costs I don't think are in here.

Representative DAUB. I don't imagine that they are.

Do you think that they are psychological enough to be affecting the explosion of premiums? Do you think that is added on here beside all the actuarial projections for what the premium ought to be for the coverage classes? Do you think those are now adding an *x* factor to the premiums they charge as they take into account those other things?

Mr. SCHOTTER. I think that the premiums are calculated, I guess, on the expectation of some types of figures about what the awards are going to be. I think the premiums will determine the behavior of the physicians in the way that you said, but typically the behavior of premiums makes them overly cautious.

Representative DAUB. Mr. Chairman, I certainly appreciate the opportunity to be here and to enjoy the testimony of these folks who worked so hard, and I appreciate the panel's contribution to an issue which will be definitely one for Congress to consider in the next couple of years.

Thank you.

Representative LUNGREN. I would just like to ask a couple of questions on that.

Mr. Schotter, you did mention allocative costs. I would like to get the views of all three of you on this.

I am not sure if I can articulate all of the potential allocative costs with respect to different types of activity. In medical malpractice cases I guess it is far easier to at least imagine what we are talking about. For example, a doctor might have x rays taken when they are really, in the doctor's judgment, not necessary. However, he wants to protect himself against the chance that someone might have a spot on their lungs. There may be no indication that there is such a spot, but if the possibility is within the wildest imagination, he or she might have x rays taken so as not to be held responsible for not diagnosing it.

This is a very real cost to society, and, Mr. Schotter, you indicate that perhaps it would be efficient for us to try to zero in allocative costs of a particular product or a particular industry.

Do you know whether this has been done thus far, and would you have any suggestions about how we might accomplish this?

Mr. **Schotter**. Well, I don't know any study that has really been done. I saw one thing mentioned, something I read, that said the American Medical Association estimated these allocative costs were something like $40 billion a year. I don't know about that number at all.

So I don't know of anybody who has really looked at that, basically because it is really a very hard problem. I think that the only feasible way to go about it would be to try to get something, probably not a terribly glamorous product but one where there are data about the demand for the product and its cost situation, and then try to find somebody to measure it. Maybe the industry has looked into what the effect on the price of the product is as a result of the fact that the product has to be designed differently, not because it reflects what consumers want or the cost situation, but because the product is distorted because of fears of various kinds of safety problems that people might have.

Representative **Lungren**. Mr Kakalik, do you have any suggestions?

Mr. **Kakalik**. One of the difficulties is that you are trying to measure the effects of the tort litigation system on people's behavior, and it is easy to see some effects and hard to see others. You see IUD's pulled off the market; you see vaccines that are pulled off the market, but what you can't see is that people don't develop new drugs because they are concerned about the liability implications, and so forth. So it is an important area, and we didn't have time to look into it.

Representative **Daub**. Would the gentleman yield?

Representative **Lungren**. I would be glad to yield.

Representative **Daub**. You don't think the figure of $40 billion is accurate?

Mr. **Kakalik**. I don't know whether it is accurate.

Representative **Daub**. $40 billion in that one category against the $68 billion figure seems a little preposterous, doesn't it?

Mr. **Kakalik**. I don't know how they could accurately calculate that.

Representative **Daub**. Mr. Sturgis.

Mr. **Sturgis**. Well, it is just a fact, an unfortunate one. One I can think of is the football helmet. Most people recognize that playing football is a dangerous activity.

Representative **Lungren**. As I understand it, we only have the two companies making football helmets and some, I guess, would argue that the tort system has run the bad actors out of the business. But I would argue that I don't think the evidence is that clear, that now we only have two and we may be down to one. Does that mean we are going to have the safest helmet possible, when there are only one person or two people in that business, where there used to be seven or eight people?

My initial reaction would be you are probably not going to have the safest helmet possible that would have been made under competitive circumstances, if the tort system has driven virtually everybody else out of the marketplace. And a football helmet is, very simply, a safety device.

Mr. STURGIS. I would only add, I think one would have to be careful in calculating the so-called allocative costs to differentiate those that are helpful and those that are not. There is no doubt that some of the methods taken by industry to protect themselves against lawsuits have been real improvements in the safety of the product, and I wouldn't know how to separate those that are helpful and those that are simply defensive and no real improvement.

Representative LUNGREN. See, that is one of the problems we have to face here as legislators, because I do happen to think the tort system in some ways, puts pressure on all of us through the way we allow the sidewalk to appear outside our doorstep, whether we go out and try to clean any of the ice off on our porch, because someone might slip, or whether a company out there is manufacturing something and having to worry about the cost of the liability, if they put something out that is not safe enough.

But I just have a sense. Sometimes in Congress and other places, we act on intuition sometimes in the best interest and sometimes not. But I have a sense that the tort system has gone beyond serving an essential purpose. It may be inhibiting the type of that activity that makes for a safer workplace in some circumstances or a safety device or anything else.

Mr. SCHOTTER. If I might, one way to get a handle on the allocative costs situation is to go at it slightly indirectly in the sense that if the jury awards were perfect, in the sense they really reflected the exact damages that resulted as a result of an accident, then I would feel somewhat secure in saying that if the insurance industry was competitive and premiums would be priced in a way that they reflect that expected damage, then the signals that, let's say, doctors were getting would be correct. They would make their decisions as to what kind of medical procedures they would use in the proper way. Therefore, what I am saying is that allocative costs are being created by awards which are not necessarily reflecting the proper damages that are done, and there might be some hope in taking a look at jury awards and seeing whether one can devise some kind of criteria to try to estimate whether they are really reflecting properly what we think is going on there. So that might be a way to approach it.

Representative LUNGREN. One thing I would like to address to all of you is this question: Have you had an opportunity to separate and analyze the noneconomic awards that are reflected in the tort system? That is, in addition to job loss or property damage, we allow pain and suffering. We also allow something, in certain circumstances, known as punitive damages. Did you break those down in any way to see their various impacts on the system, Mr. Kakalik?

Mr. **Kakalik**. We are currently doing a study of all the major aviation accidents in the last 13 years, where we are addressing that issue. We have gone into files, pulled information on the characteristics of these decedents' calculated economic loss, and we are comparing that with the actual compensation paid. Other than that, we haven't done any research on the economic loss versus total compensation.

Representative **Lungren**. One of the reasons I bring this up is because we allow punitive damages in the legal system, presumably not for the purpose of awarding a person damage but for the purpose of punishing the bad actor and for creating a deterrent from future bad actions.

Now, I was just thinking it would be interesting to see if you could have the correlation between punitive damages that have been awarded in particular industries and changes of actions in those industries. I don't know how you would go about it. Maybe you have to actually interview people to find out how they change circumstances or change the manner of their behavior. Or, perhaps you could find out whether there were a lesser number of lawsuits or a lesser number of awards in that industry after punitive damage awards had been given.

We have the system because, common sensically, we believe that punitive damages have a good purpose—a constructive purpose in society—and the beneficiary, the person who receives the benefit, really gets it incidentally. It is not set up so that the person be given an extra award because of the bad acts of somebody else; it is to punish the person who performed the action.

Mr. **Schotter**. Let me just say something about that. I think from an economic point of view and an incentive point of view, punitive damages don't make much sense. You want damages that the negligent person pays to reflect damages that he created for the other side. Punishment doesn't do that. I think the justification that I have heard for something like punitive damages is that you can't monitor a person who was creating the damages all the time, so you catch them rarely, and when you catch them, then if you put punitive damages, it does, in a sense, reflect all the damages that they inflict on people beforehand. But punitive damages, by themselves, are not really something we want from an economic efficient point of view, because they are not reflecting damages done.

Representative **Lungren**. The first question I would ask is whether the noneconomic damages awarded are a significant portion of this tort liability picture. Is it something that is an essential part of the problem that you would describe, or is it something that is relatively insignificant, when we look at the total tort system, Mr. Kakalik?

Mr. **Kakalik**. We have an ongoing study on punitive damages in Cook County, San Francisco, and California. I was trying to see if I had some preliminary numbers on that with me, but I don't.

Representative **Lungren**. Not specifically punitive. How about pain and suffering?

Mr. **Kakalik**. Pain and suffering is very difficult to get at, because, as you are well aware, they usually don't delineate either in the jury award or the settlement—how much was for economic loss and how much was for mental distress, loss of consortium or for pain and suffering. In the aviation accident cases that we are currently studying, we have an indication of how much of the total settlement went for noneconomic loss in less than 5 percent of the cases.

Representative LUNGREN. One of the reasons I am intrigued by this is, from my experience in the courtroom, I find that juries, by and large, try to do a good job. They, by and large, try to follow the instructions of the judge and, by and large, try and follow the evidence as presented to them. In one area, they are really not bound by any parameters.

In the area of the pain and suffering, the area of loss of income, in the area of cost, in the area of proper loss, in the area of medical expenses, et cetera, they really have something that they can hang onto. But having been on the other end of the argument by plaintiff's counsel so many times that I could make the argument for them, in pain and suffering, you have just this large blank chalkboard on which you can basically fill in just about anything. And if you happen to be a pretty good speaker, you might have the jury accept it, and it is a minor problem, not in an area that I would even like to look into, in terms of tort reform. But it is a significant problem and one we ought to take a look at, and at least logically to me, it would be an area where a potential tort problem is greater than in an area of actual award, because in the courtroom you have to present the medical expenses, you have to present your bills, and you have to present your loss of income.

Some present it with more ingenuity than others, nonetheless, you have some basis in presenting it.

Mr. STURGIS. If I may comment, I think perhaps our hesitancy in answering the question is that we don't have a number which your question appeared to ask for. But I think we would agree that the noneconomic portion of awards is significant and probably more than half.

Mr. KAKALIK. I couldn't agree with that. I don't know. There have been some studies. In the AIRAC study, for example, I believe the number was that 40 percent of the compensation was for economic loss.

Representative LUNGREN. You are telling me it is difficult to find that information. That may be one thing we could do on a State legislative level. For example, require the jury verdicts coming in to articulate what is assessed for what purpose. At least it would give us better information to see if, in fact, we have a problem.

Mr. KAKALIK. There really is no solid information on the breakout of the total compensation between economic and noneconomic loss.

Representative LUNGREN. At this time I would like to welcome Congresswoman Fiedler to the panel. I know because of the way I scheduled today's hearing you did not have a chance to be here at the beginning.

Do you have any questions?

Representative FIEDLER. Thank you very much, Mr. Chairman.

I have had occasion to go through a few suits on my own, and the pain and suffering aspect is a very difficult problem to get a handle on. I remember being sold a home, which we thought was in perfect condition, and it turned out that the walls were severely cracked, the ceiling was severely cracked, and there were settling problems which had been hidden. It took 5 years to resolve the case for something like $5,000.

But there were many, many nights where I lay awake worrying about whether or not the investment that had been made in that piece of property would ever be compensated to me and my spouse and my family, and how to get compensated for the actual damage was less important than the real emotional stress in an issue like that.

It is a very personal experience, but it is something that is very difficult.

That is why you are dealing with so much of the subjective on the part of the person who is hearing the case, the jurors listening to your case who have never had any problem of that kind themselves, never went through them, then obviously they are not going to identify with whatever the problems are. They may not have been injured to the degree that the plaintiff was injured, and they may not be able to identify as somebody who has had a friend or a family member involved and who would identify more closely with the pain and suffering and put a greater weight on it than might otherwise be put on it with no prior experience and simply looking at the economic compensation.

Because for me the damage that was done to the house was nominal compared to the long term, 5 years, of worrying and concern about the investment that could be lost.

So you are dealing with situations like that, a much more subjective situation than how to pay your doctor's bill.

I am happy to just listen.

Representative **Lungren**. Thank you.

One of the things I noticed in your report, Mr. Schotter, is that you say:

> Using our technique, we estimate that tort cases filed in general jurisdiction state trial courts, approximately 19 percent of total civil cases filed in the period 1979 to 1984, and tort cases filed in limited jurisdiction courts to be 5 percent. (Kakalik's method yields a percentage of 4.5 percent for general jurisdiction cases, which we consider to be far too low.)

I would like the two of you—I don't want the two of you to get into a conflict—but I would like perhaps the two of you to discuss that a little bit and whether that analysis puts your conclusions at odds in terms of the numbers we are talking about.

Mr. **Kakalik**. I think in response to that, his estimate of the transaction costs of the tort litigation system is approximately $15 to $20 billion; my estimate is $15 to $19 billion. So there is no difference in the bottom line in terms of how much society is paying for the tort litigation system.

The current estimate I am using is that tort lawsuits are approximately 10 percent of all civil filings in courts of general jurisdictions in State courts. The 5-percent figure that he cited was approximately a 4-year-old number based on the univariate technique that I have since supplanted with a much better technique to make the estimate.

The 19 percent number that he uses at the other extreme includes some data from the States of New York and New Jersey. I would point out that New York and New Jersey count filings different than other States do. So the numbers are not directly comparable. That leads to the difference.

Mr. **Schotter**. Yes. We had actually spoken about this briefly beforehand, and there really isn't as much of a discrepancy as appears.

First of all, the 4.5 percent figure that I quote is not found in the present report, but one that was in a report 4 or 5 years ago. So now that has increased to 10 percent in the present report.

And the reason that we have 19 percent, as was pointed out, was that we used data from New York and New Jersey, which tended to inflate our numbers somewhat. Those were thrown out. If those were thrown out, that then would reduce and come to a comparable figure.

The methodology was the same; it is just a matter of the conclusions are not.

Representative **Lungren**. Well, it is interesting to find here that all three of you have independent studies and may have had different approaches but all seem to be in the same ballpark.

Mr. **Kakalik**. That is correct.

Representative **Lungren**. You are counting apples and apples in some cases.

Mr. **Kakalik**. That is correct. I am not aware of any major difference in any of these three studies when you count the numbers the same way.

Representative **Lungren**. Well, I really do appreciate your testimony because it is the best available data that I have been able to review. It gives us a sense quantitatively of what we are talking about in terms of costs of the tort system.

As all three of you have indicated, people can draw different conclusions from the figures, but it does give us a sense of a playing field we are on and where Congress ought to look as we survey the whole area of tort law in the United States.

I am particularly intrigued by all three of your approaches to the growth of tort liability over the last number of years because it does seem to differ from the press accounts of the study at Williamsburg.

As you know, Mr. Kakalik, there may not be disagreement, at least to the extent that the public paid any attention to that report. The impression given in most press accounts I saw was very different than the explanation you gave here. It is almost as if people are looking at a tort liability increase and yet the facts show we are going in the opposite direction.

I think the three of you have at least indicated to us, yes, there is an increase. I would consider it to be a major increase in tort liability activity. This apparent increase as a background, I think we should have a discussion in Congress as well as in State legislatures right now as we look at the possibility of tort reform.

Representative **Fiedler**. I was just wondering if you presented any figures at all on the public cost of litigation.

Mr. **Kakalik**. Yes, we did. Out of the total $15 to $19 billion spent on the transaction costs, approximately half of $1 billion was for the operation of the court system for tort litigation, net of filing and other court fees.

Representative **Fiedler**. And of all these cases filed, how many actually come to fruition?

Mr. **Kakalik**. Approximately 5 percent reach judgment by court or jury. The vast majority are settled.

Representative **Fiedler**. Thank you.

Representative **Lungren**. I just want to thank the three of you gentlemen for appearing before us and giving us very vital testimony.

We intend to have additional hearings on the total question of tort liability, and you have given a very good beginning.

Thank you. The subcommittee stands adjourned.

[Whereupon, at 11:25 a.m., the subcommittee adjourned, subject to the call of the Chair.]

APPENDIX

Costs and Compensation Paid in Tort Litigation

James S. Kakalik, Nicholas M. Pace

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1986

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Foreword

How much does the current system of compensating people for injury cost? How much of the money spent ultimately reaches injured parties' pockets? These questions are central to the controversy concerning the tort system today, and answers to them are fundamental to changes in the system as well as to measuring the system's efficiency and effectiveness.

Until now, both critics and supporters of the tort system could only speculate about system-wide costs and compensation based on fragmentary and inconsistent evidence. Recognizing the importance of these issues early on, the ICJ has been assembling and analyzing comprehensive cost and compensation information since its inception. An early study (J. Kakalik and A. Robyn, *Costs of the Civil Justice System: Court Expenditures for Processing Tort Cases*, R-2888-ICJ, 1982) presented detailed estimates of court costs to process tort cases—public costs borne directly by the taxpayers. Subsequently, *Costs of Asbestos Litigation* (J. Kakalik et al., R-3042-ICJ, 1983) set forth the costs of asbestos litigation borne by private parties, confirming the dominance of private over public costs and establishing the dominance of transactions costs over compensation awarded for this type of litigation. In this report for the first time we have calculated the total annual bill for resolving tort lawsuits brought in courts of general jurisdiction.

This report presents the overall annual costs of the tort litigation system in 1985, the components of those costs, and the compensation awarded. It shows that about 37 percent of the costs of resolving such lawsuits was spent on the legal fees and expenses of both sides. Another 15 percent was attributable to the value of the time that plaintiffs and defendants spend on litigation and that insurers spent on processing underlying claims. A scant 2 percent was used to defray the costs of the courts. Thus when all these transaction costs were paid, plaintiffs retained about 46 percent of every dollar spent to compensate them for their injuries.

Although this report provides useful information about how much is spent on tort liability litigation, how this amount has changed in recent years as the system has evolved, and how compensation-to-cost ratios differ for different types of tort lawsuits, it leaves many important questions unanswered. In particular, the report does not attempt to tell us whether the estimated $30 billion spent annually on tort litigation is "too much" or "too little" in relation to the benefits delivered—an issue of values as well as efficiency. Nor does it address the issue of the tort liability system's effectiveness vis-à-vis other systems for compensating injury that exist or might be imagined. But by providing a clear answer to the questions "how much does it cost, how much does it compensate" the study lays essential groundwork for those who seek to answer questions of efficiency, value, and cost-effectiveness.

Gustave H. Shubert
Director
The Institute for Civil Justice

Executive Summary

COSTS AND COMPENSATION PAID IN TORT LITIGATION

Scope of this Study

Many people are concerned over the amount of society's resources being expended on civil liability litigation. But as with many long-standing issues, neither critics nor defenders of the tort system have had much solid evidence to support their views. Instead, anecdotes abound and misinformation is plentiful. The facts are hard to gather because most litigation costs and compensation payments are private expenditures, and are not reported publicly.

We undertook this study to provide empirical evidence on the following issues:

- What was the total expenditure nationwide for tort litigation[1] that was terminated in state and federal courts of general jurisdiction in 1985?
- How much of the total was spent for the various costs of the tort litigation system: plaintiffs' and defendants' legal fees and other litigation expenses, the value of litigants' time spent on their lawsuits, the value of time spent by insurance personnel, and the costs of operating the courts?
- How much of the total consisted of net compensation to plaintiffs?
- How do litigation costs and compensation paid differ for torts involving motor vehicles and all other torts?
- How fast is the tort system growing?

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[1] Cases involving civil wrong or injury, other than breach of contract, for which the court may provide damages, e.g., cases involving personal injury, death, or property damage.

We do not pass judgment on whether the costs of tort litigation and the compensation paid are too high or too low, nor do we make any policy recommendations for reforming the civil justice system. Indeed, we draw no conclusions on whether the system should undergo reform. Making such conclusions or recommendations would necessitate additional research on the costs of alternative reforms and on the benefits of the current court system and alternative systems.

This study focuses on lawsuits filed in federal district courts and in state trial courts of general jurisdiction—which account for about 92 percent of all compensation paid in tort litigation—because the most reliable data derive from those cases. The study excludes: (1) all expenditures for insured and self-insured claims that did not involve lawsuits, and (2) all expenditures for small claims and for tort litigation in courts of limited jurisdiction.

The study presents a range for the total bill for our current tort litigation system. We made two estimates. We used available published and unpublished information from the insurance industry, data from surveys of lawsuits and claims, and information on the number of lawsuits terminated in 1985. We made our first estimate from the top down, starting with the insurance industry's aggregate data on direct losses and expenses paid in 1985, adding self-insurance, and then deleting payments for claims that were not lawsuits. We made our second estimate from the bottom up, starting with data from surveys of individual tort lawsuits, appropriately projecting the numbers to 1985, and then multiplying by the number of tort lawsuits terminated in 1985 to make a national estimate.

OUR NATION'S BILL: TOTAL COSTS AND COMPENSATION PAID IN TORT LITIGATION

We estimate that the total expenditure nationwide for tort litigation terminated in state and federal courts of general jurisdiction in 1985 was between $29 billion and $36 billion. These expenditures for the approximately 866,000 tort lawsuits terminated annually in state and federal courts of general jurisdiction[2] include compensation paid to plaintiffs, legal fees and related expenses for both plaintiffs and defendants, insurance company claims-processing costs for claims in suit, the value of litigants' time spent, and the costs of operating the court system for these cases.

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[2] Approximately 866,000 tort lawsuits were terminated in state and federal courts of general jurisdiction in 1985: 827,000 in state courts and 39,000 in federal courts. Tort litigation related to motor vehicles constituted just over half of the total case terminations. Tort cases *filed* in 1985 were slightly higher: 869,000 in state and 42,000 in federal courts.

Since our $29 billion and $36 billion estimates are based on information of varying accuracy from several sources, neither can be taken as exact. However, although they were made using very different methods and using different sources for much of their data, they are similar enough to give us confidence that they are reasonably accurate.

We believe the true figure lies between our two estimates. The $29 billion estimate, based primarily on insurance industry data, is probably somewhat low because it includes data from the major lines of insurance that pay for liability litigation (the auto liability, medical malpractice, general liability, and multiperil insurance lines) but excludes the relatively small liability expenditures buried in other lines of insurance (such as the marine and boiler and machinery lines). The $36 billion estimate, based primarily on lawsuit survey data, is probably somewhat high because the survey response rate in the Civil Litigation Research Project was somewhat higher for lawsuits with higher amounts of litigation activity (and presumably higher costs).[3] Lacking sufficient data to adjust our estimates to account for these factors, we therefore present a range of estimates.

TOTAL COSTS OF TORT LITIGATION

Of the $29 to $36 billion, an estimated $16 to $19 billion was spent for the various costs of the tort litigation system, not including the net compensation paid to plaintiffs.

The breakdown of the total costs for defendants, plaintiffs, and the courts is as follows:

Defendants' Costs of Litigation

Defendants' total costs were an estimated $8 billion to $10 billion: $4.7 to $5.7 billion for legal fees and related expenses, $0.8 billion for insurance company costs of processing claims in suit, and about $2.5 to $3.5 billion representing the value of defendants' nonlawyer time and other expenses. (See Table S.1.)

---

[3] See David M. Trubek et al., *Civil Litigation Research Project Final Report:* Vol. 1, *Studying the Civil Litigation Process: The CLRP Experience*, University of Wisconsin Law School, Madison, March 1983, p. I-120. Court records showed that the median case in the sample had 11 legal "events," while there were 13 legal events for the median case with a completed lawyer interview.

Table S.1

DEFENDANTS' COSTS OF TORT LITIGATION TERMINATED IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985
(In $ billion)

Type of Cost	Estimate 1, Primarily Based on Insurance Industry Data	Estimate 2, Primarily Based on Lawsuit Survey Data
Defendants' legal fees and expenses	4.7	5.7
Claims-processing cost for lawsuits	0.8	0.8
Value of defendants' time and other expenses	2.5	3.5
Total	8.0	10.0

The average[4] tort lawsuit closed in 1985 resulted in an estimated $5,400 to $6,600 in defendants' legal fees and related expenses.

Plaintiffs' Costs of Litigation

Out of the total compensation that plaintiffs received, they paid $6 billion to $8 billion in legal fees and expenses, and the value of plaintiffs' time spent on the litigation was about $1 billion. (See Table S.2.)

The average tort lawsuit concluded in 1985 resulted in an estimated $7,300 to $8,800 in plaintiffs' legal fees and expenses, which was approximately 30 to 31 percent of total compensation paid to plaintiffs.

Court Expenditures

Court expenditures are defined as those by any level of government (federal, state, or local) for processing tort cases in the court system. The total court expenditure nationwide, net of court fees paid by tort litigants, was an estimated $0.5 billion.

---

[4] Throughout this report, the term "average" is defined as the arithmetic mean, and zero values always are included in the calculation. The average should not be interpreted as the typical value or as the median, which is the value below and above which there are an equal number of data values.

Table S.2

PLAINTIFFS' COSTS OF TORT LITIGATION TERMINATED IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985
(In $ billion)

Type of Cost	Estimate 1, Primarily Based on Insurance Industry Data	Estimate 2, Primarily Based on Lawsuit Survey Data
Plaintiffs' legal fees and expenses	6.3	7.6
Value of plaintiffs' time and other expenses	0.7	1.1
Total	7.0	8.7

COMPENSATION PAID IN COMPARISON WITH TOTAL COSTS OF TORT LITIGATION

Of the $29 to $36 billion total national expenditure in 1985, plaintiffs received $21 to $25 billion in total compensation, or about $14 to $16 billion in net compensation, after deducting all their litigation costs. (See Table S.3.)

The average total compensation paid per lawsuit concluded in 1985 in a court of general jurisdiction was in the range of $24,000 to $29,000. This average includes all tried, settled, and dismissed lawsuits.

Table S.3

COMPENSATION PAID IN COMPARISON WITH TOTAL COSTS OF TORT LITIGATION TERMINATED IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985
(In $ billion)

Type of Expenditure	Plaintiffs	Defendants	Courts	Total
Total compensation	20.7–25.1	20.7–25.1	NA	NA
Total costs of litigation	7.0–8.7	8.0–10.0	0.5	15.5–19.2
Net compensation	13.7–16.4	NA	NA	13.7–16.4
Total expenditure	NA	28.7–35.1	0.5	29.2–35.6

NOTES: The first number in the range is the RAND estimate primarily based on insurance industry data, and the second number is the RAND estimate primarily based on lawsuit survey data.

NA = not applicable.

To deliver this $14 to $16 billion in net compensation, the tort litigation system expended $16 to $19 billion in transaction costs. These costs included $11 to $13 billion in combined defendants' and plaintiffs' legal fees and expenses, $0.5 billion in court expenditures, and an additional $4 to $5 billion in the value of the time spent by litigants and their employees.

In sum, of all the money paid in compensation and legal fees and related expenses of tort litigation, the injured plaintiff receives approximately 56 percent in net compensation. The litigation system consumes the rest. If we add the value of the time spent by the litigants to the costs, the injured parties' net compensation sinks to 46 percent of the total expenditures.[5] All the components of expenditures are shown graphically in Fig. S.1.

COMPARISON OF AUTO TORT AND OTHER TORT LITIGATION EXPENDITURES

How do litigation costs and compensation differ between torts involving motor vehicles and all other torts? Auto torts accounted for about half of all tort filings in courts of general jurisdiction in 1985, and also about half of the total compensation paid. (See Table S.4.)

The legal fees and expenses paid by plaintiffs as a percent of total compensation were essentially the same for auto tort (31 percent) and other tort cases (30 percent). However, defendants' costs of litigation differ significantly. For auto tort cases, which are usually relatively straightforward, defense legal fees and expenses were an estimated 16 percent of total compensation. For other (nonauto) tort cases, which are often more complex, defense legal fees and expenses were much higher—28 percent of total compensation paid.

The plaintiffs' net compensation as a percentage of the total expenditures was 52 percent for auto torts and 43 percent for all other torts. This difference primarily reflects the relatively higher defendants' litigation costs for nonauto torts. All the components of auto and other tort litigation expenditures are shown graphically in Fig. S.2.

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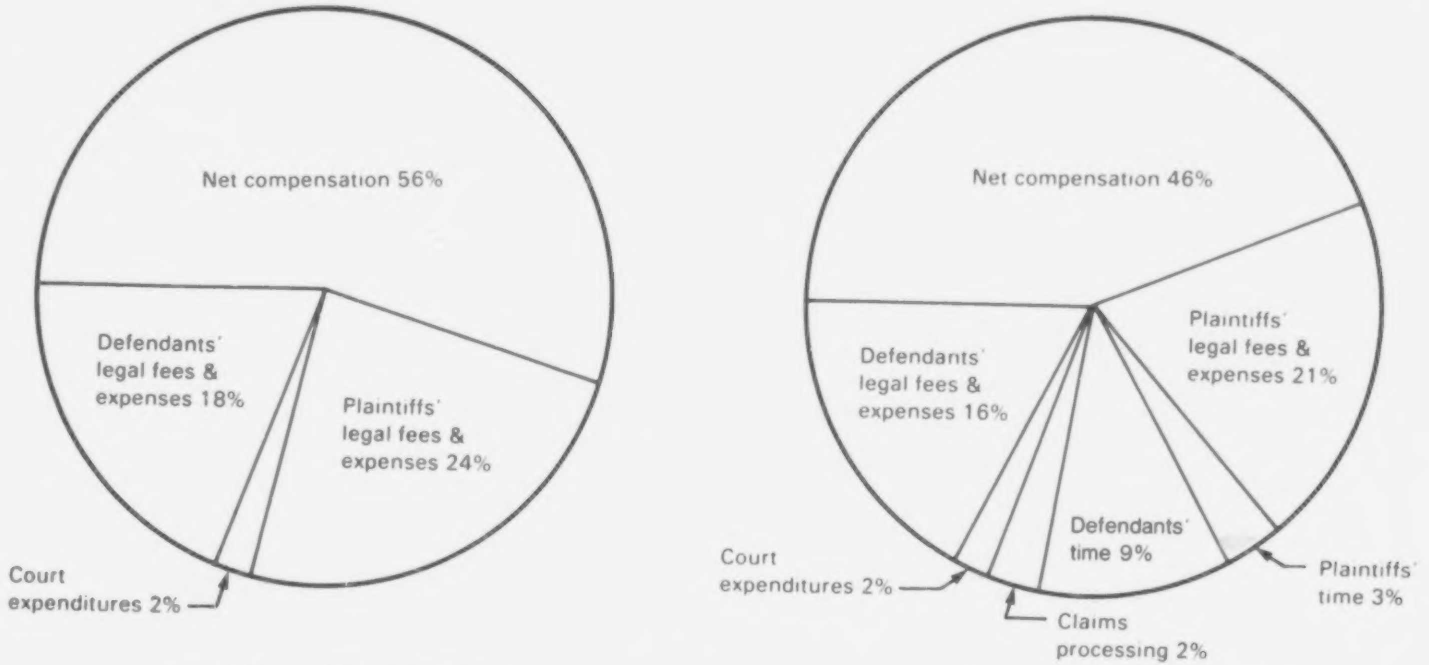
[5] Our two estimation techniques yielded similar results. The most important number, the plaintiffs' net compensation as a percentage of the total expenditures, was 47 percent using one method and 46 percent using the other.



Percentages of total expenditures
excluding value of litigants'
time and claims processing

Percentages of total expenditures
including value of litigants'
time and claims processing

NOTE: Totals may not sum to 100 due to rounding.

Fig. S.1—Costs and compensation paid for the average tort lawsuit terminated in 1985 (average gross compensation paid = $24,000 to $29,000)

Table S.4

AUTO AND OTHER TORTS: COSTS OF LITIGATION AND COMPENSATION PAID IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985
(In $ billion)

Type of Expenditure	All Torts	Auto Torts	Other Torts
Costs to plaintiffs	7.8	3.3	4.5
Costs to defendants	9.0	2.8	6.2
Court expenditures	0.5	0.2	0.3
Total costs of litigation	17.3	6.3	11.0
Net compensation paid	15.1	6.9	8.2
Total expenditures	32.4	13.2	19.2

NOTE: Dollars shown are the average of Estimates 1 and 2.

GROWTH OF THE TORT SYSTEM

Although the main focus of our study has been analysis of litigation costs and compensation paid on cases terminated in 1985, in the course of our research we also compiled some data on the rate of growth in the tort system.

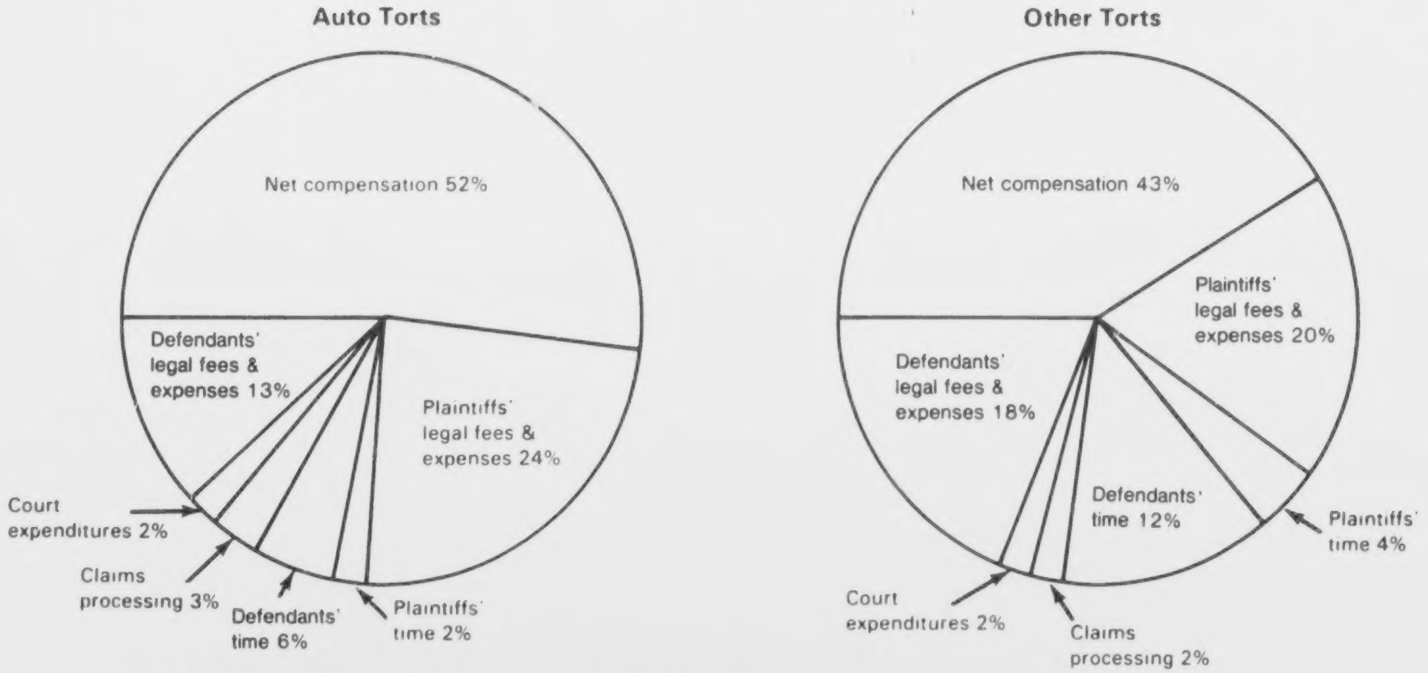
That growth rate depends on what part of the system you are considering. In terms of tort lawsuits filed, we estimate that the annual growth rate has averaged 3.9 percent since 1981—about 3.0 percent per capita.

The growth rate in the expenditures for the tort system has been higher. Although we do not have precise data on that rate for tort lawsuits, we can get a reasonable idea of that rate by looking at the growth rate in amounts paid per claim by insurers over the last five years. The following figures include both claims involving lawsuits and claims for which no lawsuit had been filed.[6]

The average annual growth rate in average compensation paid per liability claim over the past five years has been about 12 percent for auto claims and 17 percent for other tort claims—considerably higher than the 7 percent average growth in the Consumer Price Index during the same years. The average growth rate in insured defendants' average legal fees and expenses paid per liability claim over the past five years has been about 6 percent for auto and 15 percent for other tort claims. Thus, other nonauto tort expenditures per claim are growing faster than auto tort expenditures per claim.

---

[6] Of all insured liability compensation paid in 1985, we estimated 50 percent was paid for claims involving lawsuits.



NOTE: Percentages are based on the average of two estimates, and may not sum to 100 due to rounding.

Fig. S.2—Costs and compensation paid for the average auto and other tort lawsuit terminated in 1985

Because compensation payments and litigation expenditures are growing, the expenditures on cases filed in 1985 will be higher than they were on cases terminated in 1985.

SUMMARY

Plaintiffs with tort lawsuits terminated in 1985 in state and federal courts of general jurisdiction received approximately half of the $29 to $36 billion spent. The costs of litigation consumed the other half.

Acknowledgments

We are deeply grateful to the University of Wisconsin civil litigation research project staff for giving us access to their survey data.

This research also was greatly enhanced by the cooperation of numerous insurance companies and organizations, especially the Insurance Services Office, which provided access to critical data and computer files. We also appreciate the cooperation of the A. M. Best Company, which provided essential data. Any data derived from their publications or computer files are referenced where presented in this report, and in each case are copyright © A. M. Best Company—used with permission.

The National Center for State Courts and the Administrative Office of the United States Courts were helpful in providing detailed court filings data for tort cases.

Special supplementary funding for this study was provided by Aetna Life and Casualty Company, Allstate Insurance Companies, Continental Corporation, Fireman's Fund Insurance Companies, Liberty Mutual Insurance Company, and Marsh and McLennan, Incorporated. This support is gratefully acknowledged.

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I. INTRODUCTION

SCOPE OF THIS STUDY

Many people are concerned about the amount of society's resources being expended on civil liability litigation. But as with many longstanding issues, neither critics nor defenders of the tort system have had much solid evidence to support their views. Instead, anecdotes abound and misinformation is plentiful. The facts are hard to gather because most litigation costs and compensation payments are private expenditures, and are not reported publicly.

Our first two reports on the costs of the civil justice system focused on government spending, which is only the visual tip of the cost iceberg.[1] This report is concerned with tort litigation expenditures by all parties, both public and private, in 1985.

We undertook this study to provide empirical evidence on the following issues:

- What was the total expenditure nationwide for tort litigation terminated in state and federal courts of general jurisdiction in 1985?
- How much of the total was spent for the various costs of the tort litigation system: plaintiffs' and defendants' legal fees and other litigation expenses, the value of litigants' time spent on the lawsuits, the value of time spent by insurance personnel, and the costs of operating the courts?
- How much of the total was net compensation to plaintiffs?
- How do litigation costs and compensation paid differ for torts involving motor vehicles and all other torts?
- How fast is the tort system growing?

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[1] J. S. Kakalik and A. E. Robyn, *Costs of the Civil Justice System: Court Expenditures for Processing Tort Cases*, The RAND Corporation, R-2888-ICJ, 1982; and J. S. Kakalik and R. L. Ross, *Costs of the Civil Justice System: Court Expenditures for Various Types of Civil Cases*, The RAND Corporation, R-2985-ICJ, 1983. In addition, three RAND reports have been completed on the costs and outcomes of asbestos litigation, a very expensive, inefficient, and high-volume type of litigation: J. S. Kakalik, P. A. Ebener, W.L.F. Felstiner, G. W. Haggstrom, and M. G. Shanley, *Variation in Asbestos Litigation Compensation and Expenses*, R-3132-ICJ, 1984; J. S. Kakalik, P. A. Ebener, W.L.F. Felstiner, and M. G. Shanley, *Costs of Asbestos Litigation*, R-3042-ICJ, 1983; and D. R. Hensler, W.L.F. Felstiner, M. Selvin, and P. A. Ebener, *Asbestos in the Courts: The Challenge of Mass Toxic Torts*, R-3324-ICJ, 1985. An ongoing analysis of aviation accident litigation costs will be publicly available in early 1987.

By *tort* cases we mean lawsuits that involve a civil wrong or injury, other than breach of contract, for which the court may provide damages, e.g., cases involving personal injury, death, or property damage. According to the *State Court Model Statistical Dictionary*, a tort case is a civil case involving a court action resulting from an injury or wrong committed either against a person or against a person's property by a party who either did something that he was obligated not to do, or failed to do something that he was obligated to do.[2]

By *compensation* we mean the total amount paid to plaintiffs in tort litigation. By *costs* we mean legal fees and related litigation expenses, the value of litigants' time spent, the value of the time spent by in-house lawyers employed by defendants and insurers, the value of the time spent by insurance claims personnel in processing tort claims, and the costs of operating the courts. In essence, we are concerned with all the expenditures associated with litigation of disputes concerning civil liability.

This study focuses on lawsuits filed in federal district courts and in state trial courts of general jurisdiction—which account for about 92 percent of all compensation paid in tort litigation[3]—because the most reliable data derive from those cases. The study excludes: (1) all expenditures for insured and self-insured claims that did not involve lawsuits, and (2) all expenditures for small claims and for tort litigation in courts of limited jurisdiction.

Our study also excludes certain other factors. First, we do not attempt to quantify the psychological costs and outcomes associated with involvement in litigation. These psychological costs and outcomes include the worry, anxiety, and uncertainty generated as a result of the litigation, and the pain, suffering, and mental distress of litigants. Second, we exclude the costs and benefits associated with changes in future behavior because of apprehension over the possibility of future litigation. For example, vaccines, and more recently IUD contraceptives, have been withdrawn from the market assertedly because of the liability situation. Third, the outcomes of past lawsuits have some influence on the outcomes of current and future claims and lawsuits. We considered all expenditures for tort lawsuits terminated in 1985 without consideration of the impact from prior lawsuits on future claims and suits. Finally, we have considered the insurance company expenditures for litigation, but we have not included the total costs of operating the insurance system, such as the costs of commissions, underwriting expenses, and other costs that make up the total insurance premium dollar. Our study is concerned with expenditures for tort litigation, not with expenditures for the liability insurance system as a whole.

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[2] U.S. Department of Justice, Bureau of Justice Statistics, *State Court Model Statistical Dictionary*, National Center for State Courts, National Court Statistics Project, Williamsburg, Virginia, July 1980.

[3] See Table 3.5 for details.

We do not pass judgment on whether the costs of tort litigation and the compensation paid are too high or too low, nor do we make any recommendations for reforming the civil justice system. Indeed, we draw no conclusions on whether the system should undergo reform. Making such conclusions or recommendations would necessitate additional research on the costs of alternative reforms and on the benefits of the current court system and alternative systems.

RESEARCH APPROACH

This study presents a range for the total bill for our current tort litigation system. We made two estimates. We used published and unpublished information available from the insurance industry, data from surveys of lawsuits and claims, and information on the number of lawsuits terminated in 1985. We made our first estimate from the top down, starting with insurance industry aggregate data on direct losses and expenses paid in 1985, adding self-insurance, and then separating out payments for claims that were not lawsuits. We made our second estimate from the bottom up, starting with data from surveys of individual tort lawsuits, appropriately adjusting the numbers to 1985, and then multiplying by the number of tort lawsuits terminated to make a national estimate. The two estimates are relatively close, but they do differ from each other. Since we have no firm basis for believing one is more reliable than the other, we present ranges of expenditure estimates.

OVERVIEW OF DATA SOURCES

This study uses available published and much unpublished information about expenditures for the tort litigation system. These sources are reviewed and cited as they are used throughout the report. In general, those sources include:

- Published insurance industry statistics on auto liability, medical malpractice, general (other) liability, and the various multiperil lines of insurance.
- Unpublished insurance industry data from special studies that have been done by industry service organizations, as well as

from special computer tabulations that were prepared at our request using insurance industry databases. The Insurance Services Office, for example, has much unpublished claim information for a majority of the companies that sell property-casualty insurance.[4] A. M. Best Company has useful industry-wide data in its computer files that have not been published. Individual insurance company studies also have been useful in fleshing out the picture of defense costs and compensation levels for tort lawsuits.

- Previous surveys of self-insured expenditures conducted by Corning and Company and by Milliman and Robertson, Inc.
- Detailed data on tort case filings in state and federal courts from the National Center for State Courts and from the federal courts' database.
- Previous surveys in the areas of auto accident, medical malpractice, product liability, asbestos, and aviation accident litigation.
- A Department of Justice-sponsored survey of 1,649 lawsuits that included in-depth interviews with lawyers and litigants, conducted by the University of Wisconsin's Civil Litigation Research Project.

OUTLINE OF THE STUDY

The volume of tort litigation in the United States is described in Sec. II. The remainder of the text is organized by the various major components of expenditures. Analyses of compensation paid are presented in Sec. III. Plaintiffs' and defendants' litigation costs of various types are detailed in Secs. IV and V. Government expenditures on the operation of the court system are described in Sec. VI. Finally, we bring all of the numbers together in Sec. VII to make an estimate of our nation's bill for tort litigation terminated in 1985. Appendixes A and B provide detailed information on the University of Wisconsin survey of lawsuits (specifically for tort cases) and on tort case filings in state courts. Appendix C provides information on a survey of automobile accidents. Insurance industry data are detailed in App. D.

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[4] The Insurance Services Office is a nonprofit organization that collects, analyzes, and reports on rating, statistical, actuarial, policy forms, and related information for over half of the insurance companies. ISO has about 85 percent of the general liability universe, but somewhat less than that percent of the auto liability universe. Not all insurers contribute information to the ISO database.

II. NUMBER OF TORT LAWSUITS

One of the hottest topics in legal scholarship today is whether American society is experiencing a litigation explosion of unprecedented proportions. Commentators as diverse as the Chief Justice of the Supreme Court,[1] editorialists,[2] and spokesmen for interest groups such as manufacturers and insurers,[3] have decried what they perceive to be a skyrocketing number of certain types of lawsuits. An analysis of the available data on trends in court filings will reveal whether their perceptions are accurate.

The most thorough sources of information on state courts are the annual reports published by the National Center for State Courts (NCSC).[4] They are compilations of data from the annual reports published by the state court administrators together with unpublished data from state court records.[5]

The primary sources of workload statistics for the United States District Courts are annual reports published by the Director of the Administrative Office of the United States Courts.[6] These reports provide an accurate indication of the volume of federal court caseloads and trends over the years. The federal courts handle civil cases only when the United States is a party, a question regarding federal law is involved, the case is filed in a locality such as Washington, D.C., where federal courts have local jurisdiction, or the case involves two opposing parties with different citizenship (e.g., two different states) *and* the amount in controversy exceeds $10,000 (also known as "diversity" cases).[7]

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[1] W. E. Burger, "Isn't There a Better Way?" *ABA Journal*, Vol. 68, 1982, p. 274.

[2] "Why Everybody Is Suing Everybody," *U.S. News & World Report*, December 4, 1978, p. 50.

[3] Speech by Robert H. Malott, Chairman and Chief Executive Officer, FMC Corporation, at the Corporate Counsel Institute, Northwestern University Law School, October 10, 1985.

[4] *State Court Caseload Statistics: Annual Report*, National Center for State Courts, Williamsburg, Virginia.

[5] The data in these reports reflect court information from the 50 states, plus the District of Columbia, Guam, and Puerto Rico. As such, reference to "states" may include these three additional jurisdictions.

[6] *Annual Report of the Director of the Administrative Office of the United States Courts*, Government Printing Office, Washington, D.C.

[7] In addition to the U.S. District Courts, a number of limited jurisdiction federal courts deal with such matters as bankruptcy and taxation. Those other federal courts are beyond the scope of this study of tort litigation.

TOTAL STATE COURT CIVIL FILINGS

One difficulty in compiling aggregate state court statistics is the variation among states as to what court has jurisdiction over what types of cases. Trial courts usually are divided into two broad categories: "general" and "limited" jurisdiction. This study is primarily concerned with civil cases in courts of general jurisdiction.

A typical state court system chart might show a supreme court at the top and an intermediate appeals court just below it. These courts receive appeals from the courts of general jurisdiction, which hear criminal and civil cases. A general jurisdiction court might be variously labeled Circuit, Superior, Chancery and Probate, District, Court of Common Pleas, Court of Claims, County, or Law and Equity. Within each state's general jurisdictional tier, there may often be several courts handling subject matter of comparable seriousness.

Below the general jurisdiction tier are courts of limited jurisdiction, often called Municipal, Justice, Small Claims, County, City, or District Courts. These courts usually handle minor civil cases in which the amount in controversy is below some set amount (perhaps $5,000), misdemeanors, and specialized matters such as probate, water rights adjudication, or tax appeals.

Because of these structural differences among states, the composition of the general jurisdiction court's workload varies from state to state. For example, in 1984 North Carolina's Superior courts (general) handled all civil actions over $10,000 while its District courts (limited) heard only those under $10,000.[8] No such dividing line existed in Maine, where its Superior court (general) could handle any money damage case, but its District court (limited) could try contract and damage actions up to $30,000. Furthermore, seven jurisdictions or states (Idaho, Illinois, Iowa, Missouri, South Dakota, Washington, D.C., and Guam) had no limited jurisdiction courts; all civil cases were heard in the same forum.[9]

Estimating the total number of civil cases filed nationwide in state courts is further complicated by state reporting idiosyncrasies. For example, the information available to the NCSC from a state sometimes is missing data from some counties, for certain types of cases (such as mental health or adoption filings), or from some types of courts. About one-quarter of the state civil courts provided filing information that was either less than 90 percent complete or otherwise inappropriate in 1984.[10]

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[8] Court jurisdiction data from NCSC, *State Court Caseload Statistics: 1984 Annual Report*, 1986, pp. 96–101.

[9] Wisconsin and Kansas could be added to this group because their limited jurisdictional courts hear only criminal matters.

Another problem for analysts is differences in how states define "court filings." New York and New Jersey, for example, count civil filings only when a case has been "placed on the calendar" or when it has reached "issue" or "readiness." This event might occur a year or more after the original complaint or petition is filed, or might never occur if a case is settled shortly after filing. Thus, in those two large states a case that settles early in the process is not reported. This reporting system may be helpful in estimating court workload, but it does not provide an indicator of the rate of litigation. As a result, we do not use these two states' data in making our estimates of tort filings.

Because of the significant gaps in reporting by some states, the NCSC uses a least squares linear regression method to estimate the total volume of filings nationwide. Complete information on their use of this technique can be found in App. A of the NCSC *1981 Annual Report*, the last year for which NCSC made a nationwide estimate. (The NCSC did not compile data for 1982 or 1983 and made no estimate for 1984.)

For 1981, the NCSC estimated that the total number of civil filings was 14.8 million in state courts nationwide.

As shown in Table 2.1, the number of civil filings in state courts increased steadily in the late 1970s and early 1980s. The average increase per year between 1976 and 1981 was 3.9 percent.

Next, we turn to the task of estimating the number of civil lawsuits filed in state courts of general jurisdiction and the number of those civil cases that involve torts.

NUMBER OF FILINGS IN STATE COURTS OF GENERAL JURISDICTION

The total civil caseload includes totals from both general and limited jurisdiction state courts. The latter usually include small claims courts where the maximum amount in controversy is often $1000 or less. Small claims cases made up about 19 percent in 1978,[11] and 25 percent in 1981.[12] Although such cases no doubt are important to the parties

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[10] NCSC, *State Court Caseload Statistics: 1984 Annual Report*, 1986, pp. 74–79.

[11] V. E. Flango, R. Roper, and M. Elsner, *The Business of State Trial Courts*, National Center for State Courts, Williamsburg, Virginia, 1983, p. 33.

[12] Based on an estimate that small claims comprise 35.7 percent of limited jurisdiction court case filings and 16.9 percent of general jurisdiction court, and that overall jurisdiction cases comprise 54.3 percent of all civil filings in 1981. Calculated at The RAND Corporation using data from NCSC, *State Court Caseload Statistics: Annual Report*, 1981, Tables 17 and 20.

Table 2.1

ESTIMATED TOTAL STATE COURT CIVIL FILINGS, 1976-1981

Year	Million Filings
1976	12.2
1977	12.8
1978	13.0
1979	14.0
1980	14.6
1981	14.8

SOURCE: National Center for State Courts, *State Court Caseload Statistics: Annual Report*, Williamsburg, Virginia, 1981, Table 42, p. 158.

involved, by definition they do not entail the large claims and high litigation costs that have become a source of concern to many observers. In most states, extensive discovery, formal rules of evidence, juries, hearings on the record, written pleadings, and other hallmarks of the traditional civil case are not found in small claims hearings. Moreover, attorney representation often is not allowed, thus limiting the private costs of most small claims litigation to routine court and related costs.

Other limited jurisdiction courts that are not formally labeled "small claims" handle less serious civil cases involving low financial stakes, often with simplified procedures. The reported data on limited jurisdiction court workloads are incomplete. While the latest 1984 NCSC annual report contains filings data for almost all appellate and general jurisdiction courts, only 64 of the 96 limited jurisdiction courts that handled civil matters reported data that were at least 90 percent complete.[13]

The diversity in the structure and case types of limited jurisdiction courts, and the dearth of data about them, prevent us from making any conclusions about tort litigation costs in limited jurisdiction courts.[14] We therefore concentrate on courts of general jurisdiction; any disadvantage in doing so will be more than offset by the increased accuracy of our results.

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[13] NCSC, *State Court Caseload Statistics: 1984 Annual Report*, 1986, pp. 74-79, 26-35.

[14] See *Courts of Limited Jurisdiction: A National Survey*, National Institute of Law Enforcement and Criminal Justice, U.S. Department of Justice, Washington, D.C., 1977.

How much of the total caseload is handled by the courts of general jurisdiction? In 1981 in the 28 states plus Washington, D.C., that reported all civil filings for both general and limited jurisdiction courts, general jurisdiction civil filings were 54.2 percent of the total.[15] Thus, of the 14.8 million civil case filings in 1981, an estimated 8.02 million were in state courts of general jurisdiction.

TORT FILINGS IN STATE COURTS OF GENERAL JURISDICTION

Of the millions of lawsuits filed in 1985, only a modest fraction involved a tort, or liability, for personal injury, death, or property damage. The great majority were concerned with issues in domestic relations, mental health, probate and guardianship, property rights, contracts, and other civil complaints and petitions. As the National Center for State Courts recently pointed out, "There is a 'myth' that the civil caseload is mostly torts."[16] The term "lawsuit" includes many routine civil matters that have nothing to do with tort actions, the type of litigation most often associated with the "Hyperlexis Explosion."[17] Domestic relations and estate cases alone make up almost half of general jurisdiction filings in those states that report composition.[18]

Slightly less than 10 percent of all general jurisdiction filings are tort cases, and this percentage has changed but little over the last 10 years (see Table 2.2).[19]

Our calculations of litigation costs depend on a reasonably accurate estimate of the total number of tort filings in 1985. Our method of

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[15] See App. B, Table B.1, for state-by-state data. Percentage derived from NCSC, *State Court Caseload Statistics: Annual Report*, 1981, Table 13. The comparable number was 54.0 percent for 1980 based on data from 33 states.

[16] V. E. Flango, R. Roper, and M. Elsner, *The Business of State Trial Courts*, National Center for State Courts, Williamsburg, Virginia, 1983, p. 30.

[17] See, generally, ibid.; M. Galanter, "Reading the Landscape of Disputes," *UCLA Law Review*, Vol. 31, 1983, p. 4; B. Manning, "Hyperlexis: Our National Disease," *Northwestern University Law Review*, Vol. 71, 1977, p. 767.

[18] NCSC, *State Court Caseload Statistics: Annual Report*, 1981, Table 18, p. 78.

[19] Data on the number of tort case filings in courts of limited jurisdiction were available for only four courts in 1981 (Alaska, Hawaii, Ohio, and Puerto Rico). Only 4.9 percent of the civil filings in those courts were tort cases (NCSC, *State Court Caseload Statistics: Annual Report*, 1981, Tables 13, 17, and 20). This small sample of states suggests that the ratio of tort filings to all filings in courts of limited jurisdiction is somewhat less than the corresponding tort filings ratio in courts of general jurisdiction. Those tort cases filed in limited jurisdiction courts will usually entail lower economic stakes, as do small claims cases.

Table 2.2

TORT FILINGS AS PERCENT OF ALL CIVIL FILINGS IN GENERAL JURISDICTION COURTS:
1975-1984

Year	Percent
1975	10.5
1976	9.9
1977	10.1
1978	9.6
1979	9.5
1980	9.0
1981	9.3
1982	NA
1983	NA
1984	9.9

SOURCES: National Center for State Courts, *State Court Caseload Statistics: Annual Report*, Williamsburg, Virginia, 1975-1984. Calculations by The RAND Corporation based on data for 12 to 18 states (depending on the data available for the year). See App. B, Table B.2, for state-by-state details for each year.

NA = not applicable.

calculating nationwide tort filings in state courts of general jurisdiction is as follows. From the NCSC national civil case filing data for 1981, the estimated number of general jurisdiction civil case filings for 1981 was 8,020,000.[20] We multiplied that figure by 9.3 percent—the percentage that were tort cases (see App. B, Table B.2)—for a result of 746,000 tort case filings in 1981. We then used NCSC data on 1984 tort case filings for 14 states that reported tort filings in both 1981 and 1984 to calculate the annual growth rate in tort filings between 1981 and 1984. As can be seen in Table 2.3, the result was a compounded annual growth rate of 4.7 percent per year.[21] After adjustment for a 1.7 percent annual population growth in those reporting states, the growth

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[20] NCSC did not estimate national civil case filings in 1984.

[21] The NCSC recently reported a 7 percent growth in tort filings over the 1981-1984 time period (news release dated April 21, 1986)—an annual growth rate of 2.3 percent. The RAND figures differ because of NCSC's inclusion of data from four limited jurisdiction courts and from New York State courts (which report cases "at issue" rather than at filing) and because of the NCSC's exclusion of data from Texas and Montana courts (which reported 1981 and 1984, but not 1978 data).

Table 2.3

TORT FILINGS AND POPULATION GROWTH IN COURTS OF GENERAL JURISDICTION, ALL REPORTING STATES, 1981-1984

State	1981 Tort Filings	1984 Tort Filings	Annual Filings Growth (%)	1981 Population (1000)	1984 Population (1000)	Annual Population Growth (%)
Alaska	886	1,305	13.78	416	500	6.32
California	80,970	97,068	6.23	24,216	25,622	1.90
Colorado	5,089	4,199	-6.21	2,983	3,178	2.13
Florida	21,063	26,815	8.38	10,184	10,976	2.53
Hawaii	1,468	1,611	3.15	981	1,039	1.93
Idaho	1,744	1,729	-0.29	964	1,001	1.26
Kansas	4,517	4,033	-3.71	2,388	2,438	0.69
Maine	1,914	2,083	2.86	1,133	1,156	0.67
Montana	1,465	1,519	1.21	796	824	1.16
North Dakota	516	550	2.15	661	686	1.25
Ohio	21,906	22,149	0.37	10,799	10,752	-0.15
Tennessee	12,046	11,775	-0.76	4,632	4,717	0.61
Texas	28,698	34,224	6.05	14,753	15,989	2.72
Washington	7,919	8,997	4.35	4,236	4,349	0.88
Total	190,201	218,057	4.66	79,142	83,227	1.69
Total U.S. Population (1000)		229,542		236,158		0.95

SOURCE: National Center for State Courts, *State Court Caseload Statistics: Annual Report*, Williamsburg, Virginia, 1981, 1984. Population figures from *Statistical Abstract of the United States 1986*, U.S. Department of Commerce, Washington, D.C., Table 12, p. 12.

NOTE: Maryland and Utah data were not used, since 1981 and 1984 data were not comparable because of reclassification of cases. New York data were not used since New York reports only cases "at issue," rather than all tort filings.

in tort filings per capita averaged 3.0 percent per year. Since the U.S. population grew at an annual rate of 0.95 percent from 1981 to 1984, we estimated the total annual growth rate of tort filings nationwide to be 3.9 percent. Applying that annual growth rate to the 1981 figure of 746,000 tort filings yields an estimated 869,000 tort filings in state general jurisdiction courts nationwide in 1985. This amounts to about 3.6 serious tort filings per 1000 population, or one for every 275 citizens.[22]

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[22] Based on an estimated U.S. population of 238,631,000 in 1985. U.S. Dept. of Commerce, Bureau of the Census, *Current Population Reports: Population Estimates and Projections*, Washington, D.C., 1985.

TYPES OF TORT FILINGS IN STATE COURTS

The mix of tort cases in general jurisdiction courts varies greatly from state to state and from year to year. Data from the 1980 NCSC *Annual Report* (1980 was the last year the NCSC published a detailed individual state court activity appendix) indicate that 60.5 percent of all tort filings arose out of incidents involving motor vehicles in the eight states that reported such information.[23] Data from 1984 indicate the percentage that arose out of motor vehicle incidents decreased to 54.7 percent of total tort filings in state courts of general jurisdiction (see App. B, Table B.3).

Because too few states reported other types of tort cases, reliable national estimates for such cases were not possible. For example, only two states reported medical malpractice or product liability data in 1984.

NUMBER OF TORT CASE FILINGS IN U.S. DISTRICT COURT

Civil filings in U.S. District Courts have steadily increased over the years, from 117,320 in 1975 to 273,670 in 1985, as shown in Fig. 2.1. Legislative administrative mandates have pronounced effects upon the way federal agencies and private citizens use the District Courts. For example, the 17.3 percent jump in filings between 1982 and 1983 can be largely attributed to the use of the courts for recovery of overpayments in veteran educational benefits and defaulted student loans.[24] Actually, tort filings in federal court have shown only a minor increase over the past ten years and have declined slightly as a percent of total civil filings.

Of the 42,082 tort cases filed in U.S. District Court in 1985,[25] motor vehicle torts made up 16.1 percent of the total, marine torts 10.4 percent, property damage cases 9.6 percent, personal injury product liability cases 29.7 percent, and all other types of personal injury cases 34.3 percent.[26]

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[23] We excluded New York, New Jersey, and Washington, D.C., from these calculations as they report case filings in a fundamentally different manner from other jurisdictions ("cases at issue" or "readiness" rather than at the time of filing).

[24] *Annual Report of the Director of the Administrative Office of the United States Courts*, Government Printing Office, Washington, D.C., 1983, p. 5.

[25] To the published total of 41,593 tort cases, we have added the figures for "torts to land," moving them from the "real property" to the "torts" category.

[26] *Annual Report of the Director of the Administrative Office of the United States Courts*, Government Printing Office, Washington, D.C., 1985.

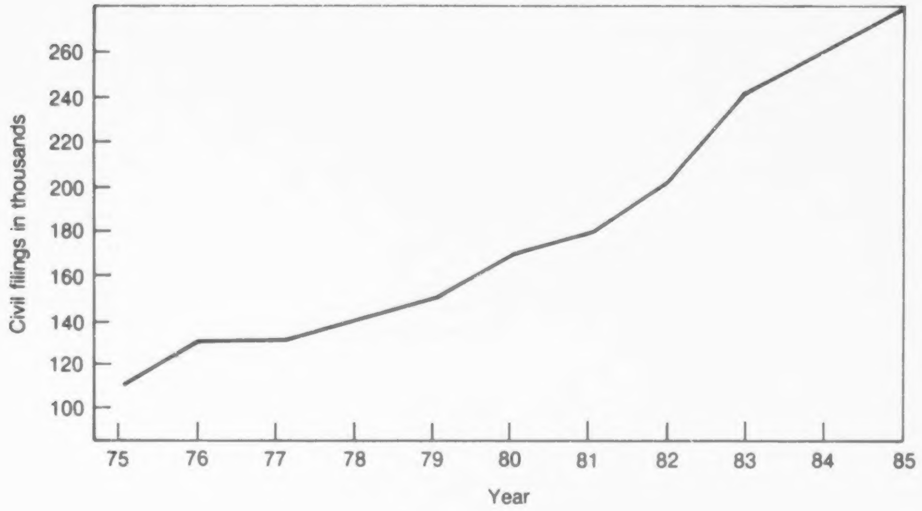


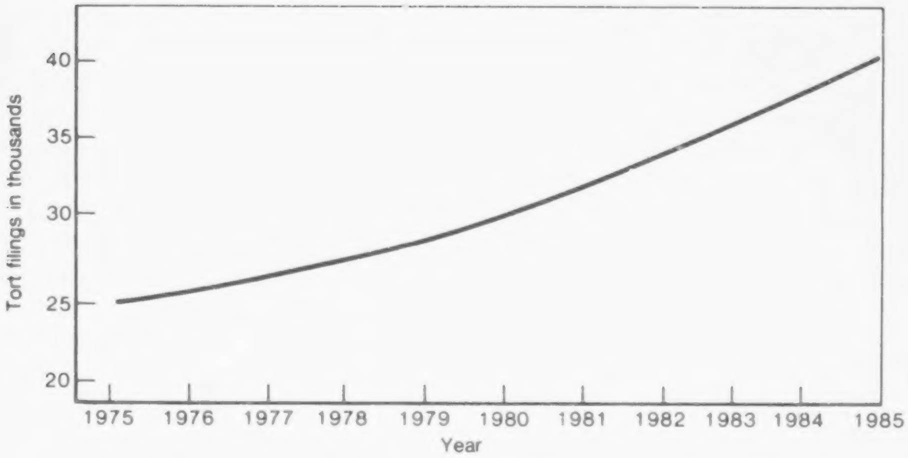
Fig. 2.1—U.S. District Court civil filings, 1975–1985 (from *Annual Report of the Director of the Administrative Office of the United States Courts*, Government Printing Office, Washington, D.C., 1985)

Tort filings in federal court increased an average of 5.0 percent per year between 1980 and 1985. (See Fig. 2.2.) Certain types increased at a much faster rate, however. For example, the growth rate was 13 percent for product liability filings. (See App. B, Table B.4, for further details.)

TOTAL TORT CASES NATIONWIDE

The annual number of tort filings in state and federal courts of general jurisdiction was approximately 911,000 in 1985, or one filing for every 262 residents. This includes 869,000 in state and 42,000 in federal courts. Only about 5 percent of all tort filings are in federal court (see Table 2.4). Tort litigation related to motor vehicles constitutes 53 percent of the total filings, 55 percent of the state, and 16 percent of the federal court filings. The annual growth rate in tort filings has been about 3.9 percent since 1981, or about 3.0 percent per 1000 population.

Since most lawsuits take months or even years, and since the number of cases filed is growing each year, slightly fewer tort cases were disposed in 1985 than were filed.



SOURCE: *Annual Report of the Director of the Administrative Office of the United States Courts*, Government Printing Office, Washington, D.C., 1975–1985 (includes "torts to land").

Fig. 2.2—Total tort filings in U.S. District Courts, 1975–1985

Table 2.4

NUMBER OF TORT LAWSUITS FILED IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985

Type of Tort Litigation	State Court	Federal Court	Total
Auto torts	478,000	7,000	485,000
Other torts	391,000	35,000	426,000
Total	869,000	42,000	911,000

The number of tort cases disposed in federal court is known,[27] but the number for state courts must be estimated. The University of Wisconsin survey of tort lawsuits found that the average time from filing to closure is 482 days for auto tort and 452 days for other tort cases.[28] Using those average times, and the annual 3.9 percent growth rate in the number of tort filings, we can estimate the number of state tort cases terminated in 1985.

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[27] From federal court database. See *Annual Report of the Director of the Administrative Office of the United States Courts*, Government Printing Office, Washington, D.C., 1985.

As shown in Table 2.5, we estimate that 866,000 tort cases were terminated in 1985 in state and federal courts of general jurisdiction.

The often quoted figure of over 16 million lawsuits filed per year includes domestic relations, probate, civil petitions, contracts, real property, small claims, mental health, and tort cases (which are a small fraction of the total). The belief that liability litigation is growing rapidly may be true for some types of tort cases (such as the 13 percent average annual increase in product liability cases from 1980 to 1985 in federal court), but the overall annual growth in all types of tort filings per capita has been only about 3 percent since 1981.

Table 2.5

NUMBER OF TORT LAWSUITS TERMINATED IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985

Type of Tort Litigation	State Court	Federal Court	Total
Auto torts	454,000	7,000	461,000
Other torts	373,000	32,000	405,000
Total	827,000	39,000	866,000

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[28] See App. A, Table A.3.

III. COMPENSATION PAID

INTRODUCTION

Below we estimate the compensation paid in 1985 to plaintiffs in tort litigation. We first discuss compensation for injury, death, and property damage in motor vehicle accidents, which account for about half of all tort litigation in courts of general jurisdiction. Then we discuss compensation paid in other types of tort litigation, such as medical malpractice and other general liability lawsuits. Finally, we sum these data and compare the estimates derived from the various data sources.

COMPENSATION PAID IN AUTOMOBILF ACCIDENT LITIGATION

In 1984, 46,200 drivers, passengers, and pedestrians were killed in the United States, and over 1,700,000 were injured, in 30,900,000 accidents,[1] resulting in large numbers of claims for compensation.

The laws governing auto accident compensation vary from state to state. In 26 states, assessment of responsibility for an accident lies totally within the civil justice system.[2] In these "tort states," an injured party makes a claim against the alleged wrongdoer; if the claim does not result in voluntary payment, the claimant can then go to court. In 15 states known as "no-fault states,"[3] the law requires that each driver/owner accept financial responsibility for some losses suffered by himself or herself and the driver/owner's passengers, in return for at least partial immunity from a lawsuit—and the immunity usually is only partial. Even in these no-fault states there is a "tort threshold" (defined by either medical costs, duration of disability, or some other criteria such as a particular injury, dismemberment, or death) above which the restrictions against suits do not apply. In the remaining nine states,[4] some features of a no-fault system have been adopted, but there is no restriction upon tort liability.

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[1] National Safety Council data cited by Insurance Information Institute (III), *Insurance Facts, 1985-1986 Edition*, New York, 1985, pp. 76, 78.

[2] Based on 1983 data in John E. Rolph et al., *Automobile Accident Compensation:* Vol. I, *Who Pays How Much How Soon?* The RAND Corporation, R-3050-ICJ, 1985, p. 9.

[3] Ibid.

[4] Ibid.

We are concerned here with those court actions that seek to establish liability on the part of the person alleged to be at fault in the accident. This includes litigation in cases that exceed the tort threshold in no-fault states. The central question is how much compensation was paid nationwide in 1985 to plaintiffs in automobile accident litigation in state and federal courts of general jurisdiction.

In this section we will make two estimates. The first one starts with national aggregate data from insurance and self-insurance payments and works down to an $8.1 billion estimate for auto tort litigation nationwide.[5] The second estimate starts with survey data on lawsuits and works up to a nationwide estimate of $12.3 billion, using data on the number of auto tort lawsuits nationwide. Both estimates are based on combining data from several sources.

Estimate 1: Auto Tort Compensation Based on Insurance Data

The steps we took to make our estimate based on insurance data are outlined in Fig. 3.1 and are discussed below.

Auto Liability Insurance Compensation Paid. How much was paid in auto accident liability compensation nationwide in 1985, including lawsuits and claims settled without a lawsuit? Insurance industry data show an estimated $24.4 billion (see Table D.1).[6] This number is "direct loss paid" by insurers in 1985. As discussed in App. D, an accurate assessment of compensation paid must use insurance loss figures that are paid (rather than incurred) and direct (rather than net of reinsurance).

Auto Liability Compensation Paid Outside the Insurance Industry. How much do self-insurance and other compensation payments outside the traditional insurance system add to the total? The data published in insurance industry references usually exclude compensation paid by defendants who are not insured or are not fully insured. That compensation paid by sources outside the insurance industry significantly affects the national tort litigation picture. "Deep pockets," such as large corporations and government bodies, may have the assets to pay compensation and may be "self-insured" (i.e., they

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[5] Both personal injury and property damage litigation are included.

[6] As detailed in App. D, insurance industry data were provided by various insurance companies and organizations. We appreciate the cooperation of the Insurance Services Office, the A. M. Best Company, the Insurance Information Institute, the All-Industry Research Advisory Council, the Alliance of American Insurers, the American Insurance Association, and several insurance companies in supplying both published and unpublished data and other assistance to our study.

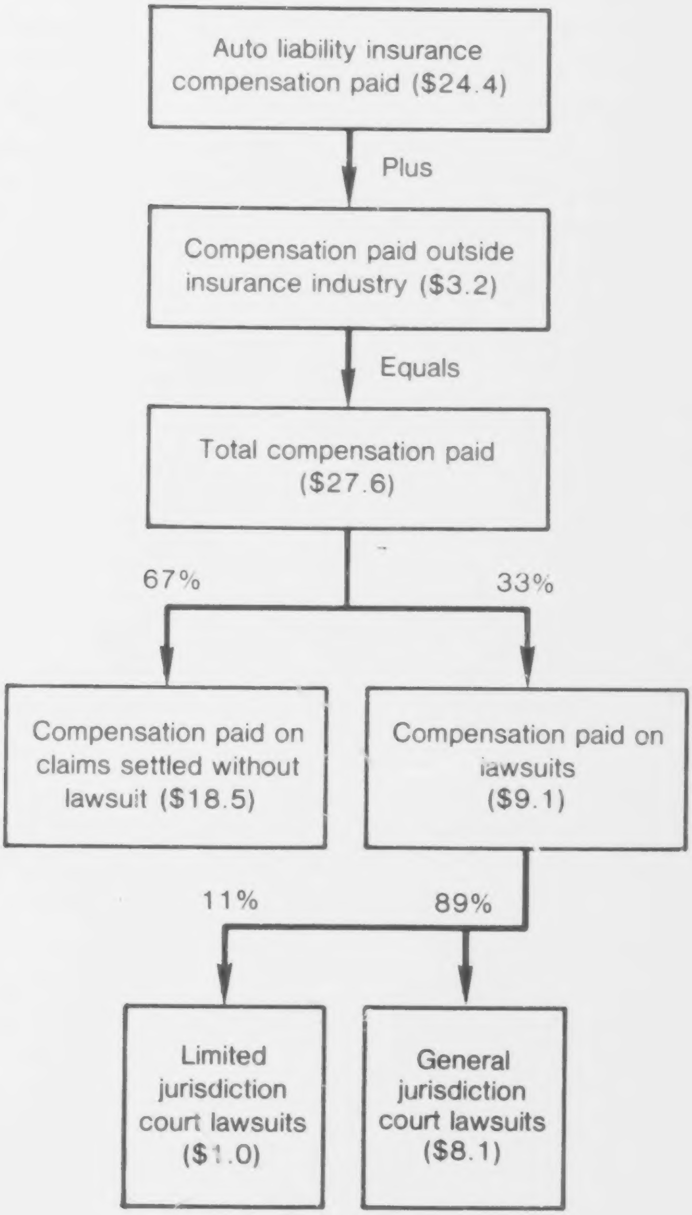
Auto liability insurance compensation paid ($24.4)
Plus
Compensation paid outside insurance industry ($3.2)
Equals
Total compensation paid ($27.6)
67%
33%
Compensation paid on claims settled without lawsuit ($18.5)
Compensation paid on lawsuits ($9.1)
11%
89%
Limited jurisdiction court lawsuits ($1.0)
General jurisdiction court lawsuits ($8.1)

Fig. 3.1—Estimation of compensation paid in automobile accident litigation in 1985, based on insurance data (in $ billion)

process and pay the claims directly rather than contract for an insurance company to do so). Some organizations are "partially self-insured" in the sense that they have very high deductibles that the organization pays before the insurance coverage begins to pay. Other individuals and organizations do not purchase adequate insurance coverage and must pay any compensation that exceeds the limits of their insurance coverage. In another area where some data are absent from traditional insurance statistics, potential insureds have turned to a "captive" insurer (a wholly owned subsidiary of a noninsurance entity that is primarily organized to insure the risks of the parent organization), to pooling arrangements, and to other alternative "insurance" mechanisms.

A study done by Conning and Company estimated that the real commercial auto insurance market (traditional insurance premiums plus the costs that are equivalent to premiums for individuals and organizations who are self-insured or have turned to a captive insurer or some other alternative insurance mechanism) was 27 percent larger than the traditional commercial auto insurance market in 1984, and annually grew 2.3 percent larger from 1980 to 1984.[7]

These Conning and Company estimates refer to premiums instead of compensation or expenses paid. We assume that over the long term the ratio of real market to traditional insurance market premiums is about the same as the ratio of real total compensation and expenses paid to traditional insurance compensation and expenses paid.

The relevant premiums for our calculations are those paid for the year of case filing, not the year of case termination, since compensation paid at case termination theoretically is really from premiums paid in the year the risk was insured.

Using the average 16-month time from filing to termination of auto tort lawsuits,[8] we estimate that the average case terminated in mid-1985 was filed in early 1984. In early 1984, the Conning and Company data indicate that the real commercial auto insurance market (including self-insurance) was 27 percent larger than the traditional commercial auto insurance market.

The Conning study was based on a survey of 800 risk managers representing various types of companies and government agencies. Hence, it does not reflect self-insurance by private citizens. Private passenger auto liability direct losses incurred were 77 percent of private plus commercial auto liability direct losses incurred in 1985.[9] Eight percent of car owners have no insurance,[10] but are less likely to be able to self-insure and pay compensation than the average commercial vehicle owner. However, some individual vehicle owners may have to pay something if the claimant's compensation exceeds the limits of an existing insurance policy.

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[7] *The Changing Property and Casualty Commercial Lines Markets*, Conning and Company, Hartford, Connecticut, December 1980, p. 42.

[8] See App. A, Table A.3, for time and Sec. II, Table 2.3, for the number of cases.

There are no reliable data on how much compensation is paid by private vehicle owners that is not covered by insurance. The Conning study arrived at a figure of 27 percent for commercial vehicles, but that figure is clearly too high for private owners because they are less able to pay compensation. On the other hand, because individuals do pay some "self-insured" compensation, zero percent is clearly too low. In the absence of reliable data, we assume that total compensation paid on private auto accident claims is about 9 percent higher than insured compensation paid.

Taking 27 percent of insured commercial auto liability compensation plus 9 percent of insured private auto liability compensation paid yields an estimate of approximately $3.2 billion in "self-insured" auto liability compensation paid in 1985. Adding this to the $24.4 billion in compensation paid by insurance companies on these auto liability claims yields a total of $27.6 billion.

Auto Tort Compensation Paid in Litigation. How much of that $27.6 billion was paid in auto accident tort litigation nationwide in 1985? Data compiled by the All-Industry Research Advisory Committee (AIRAC) study (see App. C) showed that 41 percent of all bodily injury claim dollars paid[11] went to claimants who filed suit.[12] Of the $27.6 billion total, insurance data presented in App. D indicate that 70 percent ($19.3 billion) was for bodily injury and 30 percent ($8.3 billion) was for property damage. Thus, an estimated $7.9 billion in compensation was for auto injury lawsuits (41 percent of $19.[illegible] billion).

We do not have data on the fraction of auto property damage liability compensation paid in suits, but we can estimate the fraction by assuming that the ratio of defense legal fees and expenses to compensation is the same for property damage as for bodily injury claims. As will be shown in Sec. V, defense legal fees and expenses in auto bodily injury suits were $1.03 billion (13 percent of the $7.9 billion compensation paid in suit). Since they amounted to an estimated $0.15 billion for auto property damage liability claims in 1985, we estimate that compensation paid in suit on those property damage claims was $1.2 billion; adding that figure to the $7.9 billion for injury yields a total of $9.1 billion.

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[9] Calculated from A. M. Best Company, *Best's Aggregates and Averages: Property-Casualty 1986*, Oldwick, New Jersey, 1986, p. 66.

[10] Insurance Information Institute, *Insurance Facts: 1985–86 Property/Casualty Fact Book*, New York, 1985, p. 15.

[11] Including "no-fault" compensation.

[12] *Automobile Injuries and Their Compensation in the United States*, All-Industry Research Advisory Committee (AIRAC), Alliance of American Insurers, Chicago, Illinois, 1979.

Auto Tort Compensation Paid in Courts of General Jurisdiction. How much of that $9.1 billion was paid for auto tort lawsuits in state and federal courts of general jurisdiction? We estimate there were approximately 198,000 auto tort lawsuits terminated in state courts of limited jurisdiction in 1985.[13] The minimum filing amount for general jurisdiction civil courts in those states that have limited jurisdiction civil courts ranged from $500 to $30,000 in 1985. The average was $10,000 (taking a weighted average based on each state's population).[14] We have no reliable data on the average compensation per auto tort case (or any other type of case) in a state court of limited jurisdiction. However, given the effective average ceiling of $10,000, a reasonable assumption would be an average compensation of about $5,000. Multiplying 198,000 lawsuits times $5,000 yields an estimate of approximately $1.0 billion in auto tort compensation paid on lawsuits in state courts of limited jurisdiction. Given the much larger number of auto tort lawsuits in courts of general jurisdiction, and the much higher stakes involved in general jurisdiction court cases, it is not surprising that those cases account for an estimated $8.1 billion out of the $9.1 billion compensation paid in 1985 in all auto tort lawsuits nationwide.

Estimate 2: Auto Tort Compensation Based on Lawsuit Survey Data

The steps we took to make our estimate based on lawsuit survey data are outlined in Fig. 3.2 and are discussed below.

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[13] Knowing from the data in Sec. II that 869,000 tort filings in 1985 in state courts account for about 9.8 percent of total state general jurisdiction civil filings, which in turn are about 54 percent of all state court civil filings, that state limited jurisdiction tort filings are about 5 percent of all limited jurisdiction court civil filings, and that auto tort filings in state general jurisdiction courts are 55 percent of all tort filings in those courts, we estimate 208,000 auto tort filings in state courts of limited jurisdiction in 1985. Assuming that the number of auto tort cases terminated is 95 percent of the number of cases filed (as we found for general jurisdiction cases in Sec. II), we estimate 198,000 auto tort lawsuit terminations in state courts of limited jurisdiction in 1985.

[14] Jurisdictional amounts from T. B. Marvell, "The Impact of Jurisdiction Amounts on Trial Court Caseloads," *Judicature*, Vol. 69, No. 6, April–May 1986, Table 1, p. 368; resident population data from U.S. Department of Commerce, *Statistical Abstract of the United States 1986*, Washington, D.C., December 1985, Table 11, p. 10.

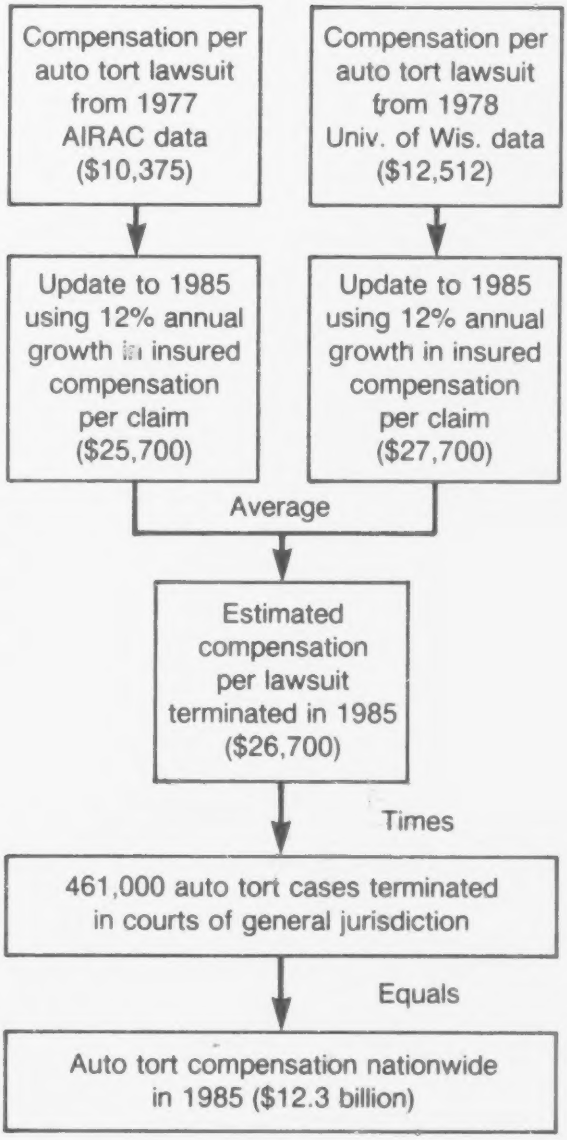
Compensation per auto tort lawsuit from 1977 AIRAC data ($10,375)
Compensation per auto tort lawsuit from 1978 Univ. of Wis. data ($12,512)
Update to 1985 using 12% annual growth in insured compensation per claim ($25,700)
Update to 1985 using 12% annual growth in insured compensation per claim ($27,700)
Average
Estimated compensation per lawsuit terminated in 1985 ($26,700)
Times
461,000 auto tort cases terminated in courts of general jurisdiction
Equals
Auto tort compensation nationwide in 1985 ($12.3 billion)

Fig. 3.2—Estimation of compensation paid in automobile accident litigation in courts of general jurisdiction in 1985, based on lawsuit survey data

Auto Tort Compensation Per Lawsuit. Two surveys provide information on how much was paid in compensation on the average auto tort lawsuit in 1985.[15]

The AIRAC Survey, described in detail in App. C, collected data on 42,204 auto accidents in 1977. From those data, we estimated that $10,375 was paid per auto accident involving a lawsuit in 1977. Updating that figure to 1985 using the 12 percent annual growth rate of auto insurance compensation payments per claim[16] yields $25,700 per accident.

The second survey we used was from the University of Wisconsin Civil Litigation Research Project,[17] which was the first large-scale empirical study of civil litigation costs and outcomes. The study collected data by means of lawyer and litigant interviews and from court records on 1,649 civil lawsuits that were closed in 1978 in 12 court jurisdictions. Details are presented in App. A.

Using data from the University of Wisconsin survey, we estimated that the average auto tort case terminated in state court resulted in compensation of $12,024 in 1978 dollars. This average includes zero-compensation cases, as do all other averages in this report. In federal court, the average was $45,854. (See Table A.21, App. A.) These averages are per lawsuit, and include compensation paid to all plaintiffs by all defendants on the suit (the average auto suit had 1.4 plaintiffs and 1.6 defendants). (See App. A, Tables A.6 through A.8, A.19, and A.20.)

Taking a weighted combination of the state and federal data, the University of Wisconsin survey shows an estimated $12,512 paid per auto tort lawsuit in 1978. Updating this to 1985 using the same 12 percent annual growth rate yields $27,700 per lawsuit.

These two estimates are very close to each other. We will use the average of the two ($26,700) in making our national estimate.

Auto Tort Compensation Nationwide. Approximately 461,000 auto tort cases were terminated in courts of general jurisdiction nationwide in 1985 (see Sec. II). Multiplying that number by the $26,700 average compensation paid per auto tort lawsuit yields an estimate of $12.3 billion in 1985.

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[15] A national study of auto accidents was conducted by the U.S. Department of Transportation. However, the data are nearly 20 years old, and we will rely on the more current information from other sources. U.S. Department of Transportation, *Motor Vehicle Crash Losses and Their Compensation in the United States*, Washington, D.C., March 1971.

[16] See App. D for derivation of this growth rate.

[17] David M. Trubek et al., *Civil Litigation Research Project Final Report:* Vol. 1, *Studying the Civil Litigation Process: The CLRP Experience*, University of Wisconsin Law School, Madison, March 1983. This survey identified litigation involving auto accidents, but the University of Wisconsin reports published to date have aggregated auto torts with all other types of litigation. Our study analyzes auto tort litigation separately.

COMPENSATION PAID IN OTHER LIABILITY LITIGATION

While auto tort litigation accounts for about half of the "action," there are many other types of tort litigation, such as that arising from medical malpractice, product liability, and slips and falls. We also can use data from the insurance industry, the state and federal lawsuit filing reports, the University of Wisconsin survey of lawsuits, and other studies to estimate the total payout in compensation from defendants to plaintiffs through nonauto tort litigation in courts of general jurisdiction in 1985.

Below we make two estimates of how much compensation was paid nationwide in 1985 to plaintiffs in other (nonauto) liability litigation in state and federal courts of general jurisdiction. The first estimate starts with national aggregate data from insurance and self-insurance payments and works down to a $12.6 billion estimate for other liability litigation nationwide. The second estimate starts with survey data on lawsuits and works up to a nationwide estimate of $12.8 billion using data on the number of other tort lawsuits.

Estimate 1: Other Tort Compensation Based on Insurance Data

Compared with automobile litigation, determining compensation that passes through litigation for other types of torts is a more difficult task. Many other types of torts exist, and insurance data concerning them usually are not collected separately. Table 3.1 lists the property-casualty insurance lines. While some of the lines of insurance deal almost exclusively with liability issues (e.g., medical malpractice), insurance coverage in other lines may include both tort and other types of claims. For example, homeowners' multiperil insurance is purchased to protect against a wide variety of losses such as those from fire, windstorm, burglary, and theft, and also to protect against many types of nonauto liability claims such as those filed by a person who slips and falls on a homeowner's sidewalk. Because this makes it difficult to separate out the dollars that flow from each type of tort, we will aggregate nonauto types of torts together in most of the analysis that follows.

Based on discussions with various insurance industry executives, we understand that the overwhelming majority of tort litigation compensation is paid through the auto liability, medical malpractice, general (other) liability, commercial multiperil, and homeowners multiperil lines of insurance. Other lines of insurance entail only relatively small

Table 3.1

VARIOUS LINES OF PROPERTY-CASUALTY INSURANCE

- Fire
- Allied lines
- Farmowners multiperil
- Homeowners multiperil
- Commercial multiperil
- Ocean marine
- Inland marine
- Medical malpractice
- Earthquake
- Group accident and health
- Credit accident and health
- Other accident and health
- Workers' Compensation
- General (other) liability
- Private passenger auto liability
- Commercial auto liability
- Private passenger auto property damage
- Commercial auto property damage
- Aircraft
- Fidelity
- Surety
- Glass
- Burglary and theft
- Boiler and machinery
- Credit
- Reinsurance

amounts. We have already reviewed the auto data. Here we will review medical malpractice, general liability, and multiperil insurance data. In making our total estimate of compensation paid, we have not undertaken the difficult task of ferreting out the relatively small amounts of tort litigation compensation that may be buried in other lines of insurance.

The steps we took to make our estimate based on insurance data are outlined in Fig. 3.3 and are discussed below.

Medical Malpractice Insurance Compensation Paid. Because the vast majority of health care providers have malpractice insurance,[18] we can use insurance industry data as a useful source for estimating compensation paid nationwide.

How much was paid in medical malpractice liability compensation nationwide in 1985, including lawsuits and claims settled without a lawsuit? Insurance industry data show $1.54 billion (see App. D, Table D.3). These are dollars that were paid (rather than incurred) and direct (rather than net of reinsurance).

General Liability Insurance Compensation Paid. This general liability line of insurance, also known as "other liability," provides compensation for a wide range of claims arising from injury, property damage, or other losses. This type of insurance can cover almost all potential tort litigation when responsibility arises from the ownership of real property (e.g., "slips and falls"), the manufacture and/or

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[18] Over 95 percent of physicians have some malpractice insurance, according to H. Jacobs, *The Spectre of Malpractice*, Nationwide Press, Pueblo, Colorado, 1978, p. 65.

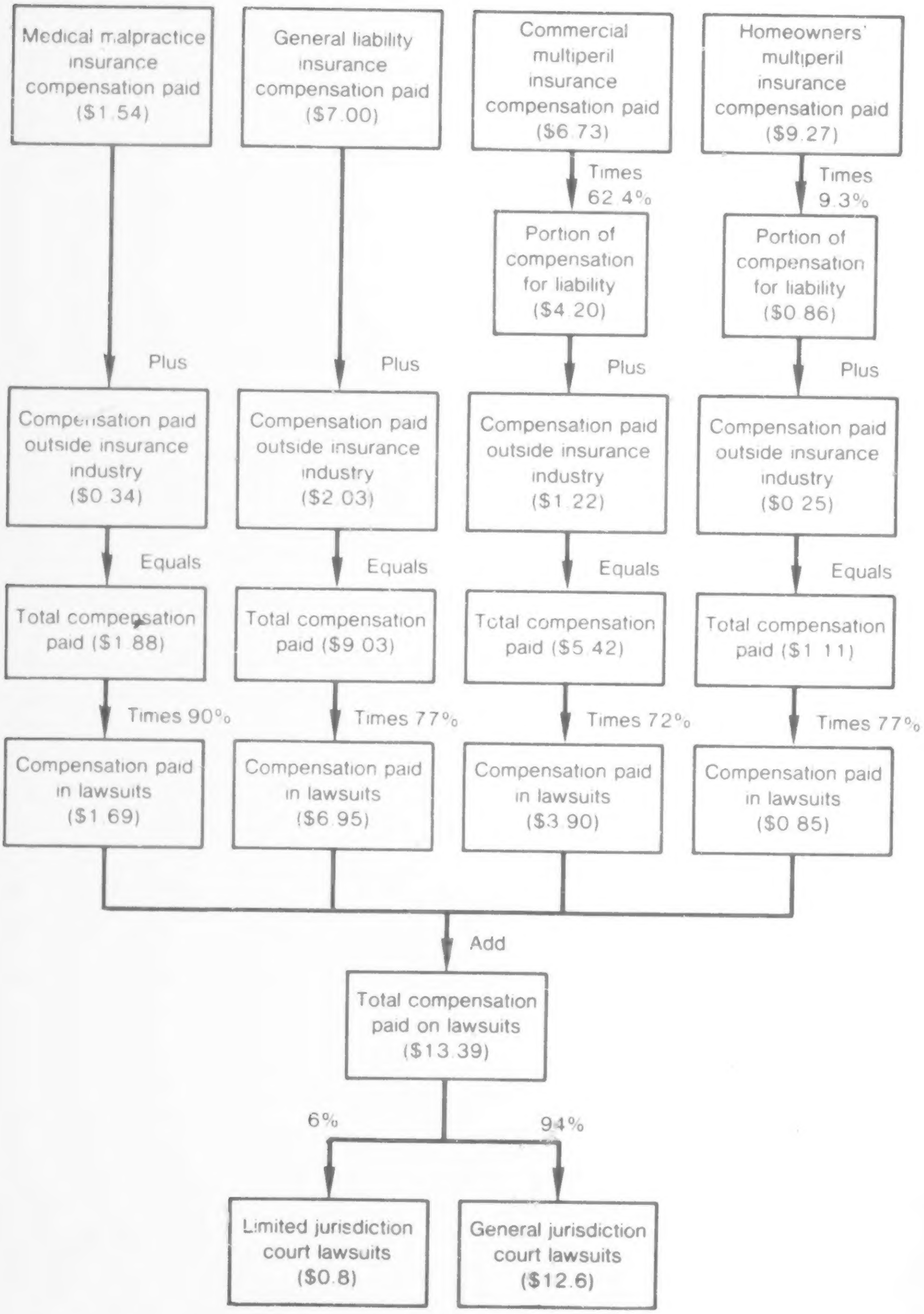
Medical malpractice insurance compensation paid ($1.54)
General liability insurance compensation paid ($7.00)
Commercial multiperil insurance compensation paid ($6.73)
Homeowners' multiperil insurance compensation paid ($9.27)
Times 62.4%
Times 9.3%
Portion of compensation for liability ($4.20)
Portion of compensation for liability ($0.86)
Plus
Plus
Plus
Plus
Compensation paid outside insurance industry ($0.34)
Compensation paid outside insurance industry ($2.03)
Compensation paid outside insurance industry ($1.22)
Compensation paid outside insurance industry ($0.25)
Equals
Equals
Equals
Equals
Total compensation paid ($1.88)
Total compensation paid ($9.03)
Total compensation paid ($5.42)
Total compensation paid ($1.11)
Times 90%
Times 77%
Times 72%
Times 77%
Compensation paid in lawsuits ($1.69)
Compensation paid in lawsuits ($6.95)
Compensation paid in lawsuits ($3.90)
Compensation paid in lawsuits ($0.85)
Add
Total compensation paid on lawsuits ($13.39)
6%
94%
Limited jurisdiction court lawsuits ($0.8)
General jurisdiction court lawsuits ($12.6)

Fig. 3.3—Estimation of compensation paid in other (nonauto) tort litigation in 1985, based on insurance data (in $ billion)

distribution of goods ("product liability"), the operation of various enterprises such as construction activity or parades or day-care centers, and the dispensing of professional services or advice.

Insurance industry data show $7.00 billion as being paid in general liability insurance compensation in 1985, including lawsuits and claims settled without a lawsuit (see App. D, Table D.5).

Multiperil Insurance Liability Compensation Paid. How much was paid in liability compensation from multiperil insurance in 1985, including lawsuits and claims settled without a lawsuit?

For the commercial multiperil lines of insurance, we estimate that direct paid compensation was $6.73 billion in 1985 (see App. D, Table D.9). Since 62.4 percent of the total was for liability compensation (rather than fire, theft, or other perils; see App. D, Table D.8), we estimate that $4.20 billion was paid in compensation for tort claims and lawsuits in 1985.

For the homeowners' multiperil line of insurance, we estimate that direct paid compensation was $9.27 billion in 1985 (see App. D). Since 9.3 percent of that total (see App. D, Table D.8) was for liability compensation, we estimate that $0.86 billion was paid in compensation for tort claims and lawsuits in 1985.

Medical Malpractice Compensation Paid Outside the Insurance Industry. How much do self-insurance and other compensation payments outside the traditional medical malpractice insurance system add to the total?

Traditionally, the bulk of professional liability insurance was obtained from commercial insurance carriers. With the rapid changes that affected the health care industry's ability to acquire malpractice insurance at desired rates in the early 1970s, health care providers turned to provider-owned insurance companies to fill the void in coverage created by rapidly rising premiums and the withdrawal of many of the traditional insurance companies from the market. Today over 4C of these carriers provide coverage to more than half of the practicing physicians in the nation, with about three-quarters of these groups having ties to local medical societies, and the balance operating as independents.[19] Another source of liability protection is joint underwriting associations (JUAs), created by state law to write malpractice insurance where it became difficult or impossible to obtain. The JUAs are pooling mechanisms whereby the participating companies share in both the profits, losses, and expenses of writing malpractice coverage. Still another response to the medical malpractice problem was the creation of patient compensation funds (PCFs) and catastrophe funds (CATs) in about nine states that provide the source of recovery over a threshold amount.

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[19] American Medical Association Special Task Force on Professional Liability and Insurance, *Professional Liability in the 1980s*, American Medical News, Chicago, Illinois, October 1984.

While much attention is focused upon the individual physician's or surgeon's liability, hospitals also are a major source of compensation in medical malpractice actions. While many hospitals purchase insurance like any other health care provider, it has been estimated that 20 percent to 40 percent of hospital professional liability costs are self-insured (though that percentage may include direct insurance through foreign insurers).[20] Thus, part of the compensation of claimants is made from the assets of the hospital (or hospital chain). Likewise, state, federal, and local governments that provide health care services also often are self-insured. The Veterans Administration, the U.S. military hospitals, and state and county hospitals and clinics dispense a vast amount of medical care and often rely upon their own assets to pay any verdicts or settlements. Finally, some physicians go "bare"; i.e., practice without any insurance coverage.

A. M. Best Company's and the Insurance Services Office's insurance statistics provide information on premiums and compensation paid by commercial insurers and many of the physician-owned insurers but do not report complete data regarding Joint Underwriting Associations, Patient Compensation Funds, Catastrophe Funds, and the self-insured hospitals, government agencies, and physicians that make up the balance of liability compensation sources. We must then turn to other sources for those data.

Using A. M. Best's figures as a starting point, Milliman and Robertson, Inc., consulting actuaries, estimated the total medical malpractice insurance premiums (including "self-insured") in the United States for 1984.[21] Table 3.2, taken from the Milliman and Robertson analysis of tort reform proposals for the American Medical Association, summarizes these estimates. The Milliman and Robertson total of $2.744 billion is 22 percent larger than the $2.258 billion reported by A. M. Best Company sources. Accordingly, the reported insurance industry medical malpractice data must be increased to obtain a national total. Using the ratio of 1.22 to 1 described above, and assuming that direct paid compensation rises proportionally with direct premiums, the nationwide direct compensation paid for medical malpractice claims was an estimated $1.88 billion in 1985.

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[20] *Actuarial Analysis of American Medical Association Tort Reform Proposals*, Milliman and Robertson, Inc., New York, September 1985.

[21] Ibid.

Table 3.2

ESTIMATED MEDICAL PROFESSIONAL LIABILITY PREMIUM COSTS IN THE UNITED STATES

Item	Amount in Millions
U.S. direct written premiums, 1984	$2,258
Joint Underwriting Associations not included in item 1	120
Patient compensation funds, catastrophe funds, and other "pay-as-you-go" financial mechanisms	166
Hospital self-insurance programs and hospital programs outside the United States	200
Total	$2,744

SOURCE: Milliman and Robertson, Inc., *Actuarial Analysis of American Medical Association Tort Reform Proposals*, New York, September 1985, p. 2.

General Liability and Multiperil Liability Compensation Paid Outside the Insurance Industry. How much do self-insurance and other liability compensation paid outside the traditional general liability and multiperil liability insurance system add to the total?

The Conning and Company study estimated that the real nonauto liability insurance market (including self-insurance, captives, and so forth) was 29 percent larger than the traditional nonauto liability insurance market in 1984 and annually grew 1.4 percent larger from 1980 to 1984.[22] As explained in our discussion of auto tort compensation, the relevant premiums for our calculations are those paid for the year of case filing. Using the average 15-month time from filing to termination of nonauto tort lawsuits,[23] we estimate that the average case terminated in mid-1985 was filed in early 1984.

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[22] Conning and Company, *The Changing Property and Casualty Commercial Lines Markets*, Hartford, Connecticut, December 1980, p. 46. Conning and Company included the following in "other liability": general liability, medical malpractice, and 40 percent of commercial multiperil insurance. A comparison of the 1980 Conning and Company estimate of the traditional insurance market's premiums for 1984 with the corresponding number found in *Best's Aggregates and Averages* reveals that they are not the same. This is understandable in view of the highly variable rate of inflation in the U.S. economy in the last ten years. We are concerned here only with the ratio of the real market to the traditional insurance industry, and the Conning and Company study appears to have projected this ratio as accurately as possible.

Multiplying 29 percent times the $12.06 billion in general and multiperil insured compensation yields an estimated $3.50 billion in "self-insured" liability compensation paid in 1985.

Adding the insured and self-insured numbers gives a total of $15.56 billion for compensation for general and multiperil liability in 1985.

Medical Malpractice Compensation Paid in Litigation. How much of the $1.88 billion paid in medical malpractice compensation was paid in tort litigation in 1985? The Insurance Services Office (ISO), NAIC, and Westat closed-claim surveys showed that approximately 86 to 93.5 percent of total compensation paid in the mid-1970s was paid for claims involving lawsuits (see Table 3.3). Using the midpoint 90 percent, we estimate that $1.69 billion was paid as a result of medical malpractice tort litigation.

General Liability Compensation Paid in Litigation. How much of the $9.03 billion paid in general liability compensation was paid in tort litigation in 1985? Based on the ISO's "Special Call Data," we can estimate the total compensation paid through lawsuits. Although ISO does not note the existence of a lawsuit in their data, the size of the "allocated loss adjustment expense" (ALAE) is known for each claim. ALAE includes legal fees and expenses. See Sec. V for a fuller discussion of ALAE. From interviews with ISO and several insurance companies, we learned the following: (1) Because lawsuits almost always entail legal fees or expenses or both, claims with zero ALAE are almost never lawsuits. A total of 64 percent of all general liability claims in 1984 had zero ALAE and hence had a very high probability of not being lawsuits. (2) Any general liability claim with ALAE over $1,000 has a high probability of being a lawsuit because claims that are not suits usually do not have expenses over $1,000. A total of 17 percent of all general liability claims in 1984 had ALAE over $1000 and hence had a high probability of being lawsuits. (3) Claims with low but nonzero expenses ($1 to $1,000 in ALAE) may or may not have an associated lawsuit. This low-expense category accounted for the remaining 19 percent of all general liability claims closed in 1984. Our estimate for general liability lawsuits in 1984 is based on the assumptions that all claims paid with an ALAE greater than $1,000 occurred after a suit was filed, and that one-half of the claims paid with an ALAE of $1 to $1,000 also were suits. (See Table D.7.)

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[23] See Table A.3 for time data and Table 2.3 for the number of cases.

Table 3.3

PERCENT OF MEDICAL MALPRACTICE COMPENSATION PAID ON CLAIMS WITH LAWSUITS

		Percent of Compensation Paid[a]	
Data Year	Closed-Claim Study	Claims Without Lawsuits	Claims With Lawsuits
1970	Westat, Inc., 1973[b]	6.5	93.5
1974	Insurance Services Office, 1976[c]	11.5	88.5
1976	Westat, Inc., 1978[d]	6.8	93.2
1978	NAIC[e]	14.0	86.0

[a] Percentages calculated at RAND from available tabulations showing total claim numbers, percent of claims with award, average nonzero award, and status at closure for the claims that reported such data.

[b] Westat, Inc., *Study of Medical Malpractice Claims Closed in 1970*, report prepared for the Secretary's Commission on Medical Malpractice, Department of Health, Education, and Welfare, Washington, D.C., 1973.

[c] Insurance Services Office, *Report of the All-Industry Committee Special Malpractice Review: 1974 Closed Claim Survey Technical Analysis of Survey Results*, American Insurance Association, New York, 1976.

[d] Westat, Inc., *Medical Malpractice Closed Claim Study—1976, Final Report*, National Center for Health Statistics, Department of Health, Education, and Welfare, Rockville, Maryland, March 1978.

[e] National Association of Insurance Commissioners, *Malpractice Claims*, Madison, Wisconsin, Vol. 2, No. 2, September 1980, p. 62.

An estimated 77 percent of the general liability compensation paid was for lawsuits. This compares with 33 percent for auto and 90 percent for medical malpractice claims.

Given that $9.03 billion was paid in general liability compensation in 1985, we use the 77 percent figure to estimate that $6.95 billion of the total was paid after a lawsuit was filed.

Multiperil Liability Compensation Paid in Litigation. How much of the $6.53 billion paid in multiperil liability compensation was paid in tort litigation in 1985? Data are not available for multiperil insurance separately. For commercial multiperil insurance, 11 percent of the liability compensation paid is for automobile liability and 89 percent is for general liability.[24] Using the 33 percent of auto liability compensation and the 77 percent of general liability compensation that was paid for claims involving lawsuits, we estimate that $3.90 billion in commercial multiperil liability compensation was paid in tort litigation in 1985. For homeowners' multiperil insurance, virtually all liability compensation paid is for general liability.[25] Using the 77 percent of general liability compensation that was paid for claims involving lawsuits, we estimate that $0.85 billion in homeowners' multiperil liability compensation was paid in tort litigation in 1985.

Other Tort Compensation Paid in Courts of General Jurisdiction. Adding the figures for all types of nonauto liability litigation results in an estimate of $13.4 billion paid in compensation as a result of all other (nonauto) tort litigation in 1985.

How much of that $13.4 billion was paid for other tort lawsuits in state and federal courts of general jurisdiction? We estimate there were approximately 162,000 nonauto tort lawsuits terminated in state courts of limited jurisdiction in 1985.[26] Using the same methodology that we used for auto torts earlier in this section, we estimate the average compensation per suit to be about $5,000. Multiplying 162,000 lawsuits times $5,000 yields an estimate of approximately $0.8 billion in nonauto tort compensation paid on lawsuits in state courts of limited jurisdiction.

Estimate 2: Other Tort Compensation Based on Lawsuit Survey Data

The steps we took to make our estimate based on lawsuit survey data are outlined in Fig. 3.4.

Other Tort Compensation Per Lawsuit. How much was paid in compensation on the average other (nonauto) tort lawsuit in 1985?

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[24] Interview with Mark Whitman, Insurance Services Office, Inc., New York, October 20, 1986.

[25] Ibid.

[26] Knowing from the data in Sec. II that 869,000 tort filings in 1985 in state courts of general jurisdiction are about 9.8 percent of total state general jurisdiction civil filings, which in turn are about 54 percent of all state court civil filings, that state limited jurisdiction tort filings are about 5 percent of all limited jurisdiction court civil filings, and that auto tort filings in state general jurisdiction courts are 55 percent of all tort filings in those courts, we estimate 170,000 nonauto tort filings in state courts of limited jurisdiction in 1985. Assuming that the number of nonauto tort cases terminated is 95 percent of the number of cases filed (as we found for general jurisdiction cases in Sec. II), we estimated 162,000 nonauto tort lawsuit terminations in state courts of limited jurisdiction in 1985.

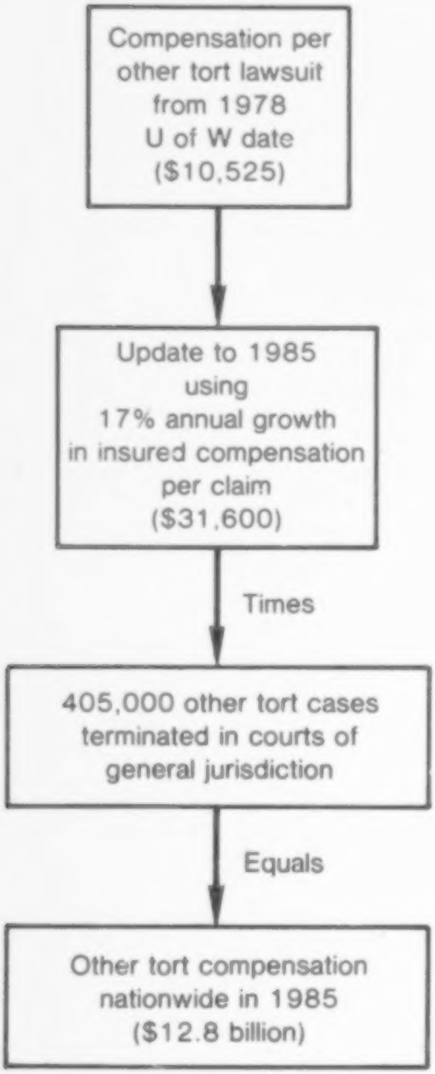
Compensation per other tort lawsuit from 1978 U of W date ($10,525)
Update to 1985 using 17% annual growth in insured compensation per claim ($31,600)
Times
405,000 other tort cases terminated in courts of general jurisdiction
Equals
Other tort compensation nationwide in 1985 ($12.8 billion)

Fig. 3.4—Estimation of compensation paid in other (nonauto) tort litigation in courts of general jurisdiction in 1985, based on lawsuit survey data

The University of Wisconsin Civil Litigation Research project[27] discussed in App. A provides useful information.[28]

Because data gathered on nonauto tort compensation by the University of Wisconsin research team do not permit any meaningful analysis of specific types of nonauto tort cases (e.g., for product liability or medical malpractice cases only), we will discuss compensation for *all* of these nonauto cases together.

Using data from that survey, we estimated that the average other (nonauto) tort case filed in state courts of general jurisdiction resulted in compensation of $7,593 in 1978 dollars. In federal court, the average was $43,288. See App. A, Table A.21. These averages are per lawsuit and include compensation paid to all plaintiffs by all defendants on the suit (the average other tort case had 1.2 plaintiffs and 1.7 defendants). See App. A, Tables A.6 through A.8, A.19, and A.20. Combining the state and federal data, the University of Wisconsin survey shows an estimated $10,525 paid per other tort lawsuit terminated in 1978. Updating this to 1985 using the 17 percent annual growth rate of other (nonauto) liability insurance compensation per claim yields $31,600 per lawsuit.[29]

Other Tort Compensation Nationwide. Approximately 405,000 other tort cases were terminated in courts of general jurisdiction nationwide in 1985 (see Table 2.5). Multiplying that number by the average compensation paid per other tort lawsuit yields an estimate of $12.8 billion in 1985.

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[27] David M. Trubek et al., *Civil Litigation Research Project Final Report: Vol. 1, Studying the Civil Litigation Process: The CLRP Experience*, University of Wisconsin Law School, Madison, March 1983.

[28] Projecting an accurate national total by multiplying individual medical malpractice lawsuit data times the number of such lawsuits is not feasible for several reasons: (1) Since 1978 there has been no national compilation of data on individual medical malpractice claims (P. M. Danzon, *New Evidence on the Frequency and Severity of Medical Malpractice Claims*, The RAND Corporation, R-3410, 1986, p. 1.); (2) only two states keep data separately on the number of medical malpractice lawsuits filed; and (3) insurance companies know compensation paid per claim but usually not per injured person, because medical malpractice cases often have multiple claims for a single injured person (i.e., there may be one claim for each defendant, especially if the defendants have different insurers).

[29] This 17 percent growth rate is an average, weighted by the amount of compensation paid in tort litigation for each type of insurance. See App. D for derivation of average annual growth rates in compensation paid per claim (13.6 percent for medical malpratice, 18.0 percent for general liability, and 12.0 percent for auto liability). For commercial multiperil insurance, 89 percent of liability compensation paid is general liability and 11 percent is auto liability. For homeowners' multiperil insurance, virtually 100 percent of liability compensation is for general liability.

NATIONAL ESTIMATE OF ALL TORT LITIGATION COMPENSATION PAID

Combining the results for auto and other tort litigation in state and federal courts of general jurisdiction yields a total of $20.7 billion to $25.1 billion nationwide in 1985. About half the total was for auto tort and half for all other types of tort litigation. We were gratified that our two estimation methods (working down from aggregate insurance industry data and working up from individual lawsuit survey data) yielded very similar results (see Table 3.4).

Table 3.4

TOTAL COMPENSATION PAID IN TORT LITIGATION
IN COURTS OF GENERAL JURISDICTION
IN THE UNITED STATES IN 1985
(In $ billion)

Type of Tort Litigation	Estimate 1, Based on Insurance Industry Data	Estimate 2, Based on Lawsuit Survey Data
Auto torts	8.1	12.3
Other torts	12.6	12.8
Total	20.7	25.1

The average growth rate in compensation paid per claim over the past five years has been about 12 percent for auto and 17 percent for other tort claims. The average tort lawsuit concluded in 1985 resulted in an estimated $24,000 to $29,000 compensation.

Nationwide in 1985, we estimate that compensation paid for all tort claims with and without lawsuits totaled $45 billion. Compensation paid for claims involving lawsuits amounted to 50 percent of the total (see Table 3.5).

Table 3.5

LITIGATION COMPENSATION IN THE CONTEXT OF ALL TORT COMPENSATION PAID IN 1985
(In $ billion)

Type of Tort Litigation	Total Compensation Paid in All Tort Claims With and Without Lawsuits	Total Compensation Paid in All Tort Lawsuits		Total Compensation Paid in Tort Lawsuits in State and Federal General Jurisdiction Courts (Estimate 1)
Auto torts[a]	27.6	9.1	33%	8.1
Other torts	17.4	13.4	77%	12.6
All torts	45.0	22.5	50%	20.7

SOURCE: Based on insurance industry data.

[a] Includes "no-fault" compensation.

IV. PLAINTIFFS' COSTS OF LITIGATION

Parties on opposite sides of tort litigation differ fundamentally in certain ways. Nearly all plaintiffs are individuals (93 percent), while defendants are most often organizations (59 percent), such as businesses, insurance companies, and government agencies. (See App. A, Table A.9.) Tort plaintiffs almost always pay their lawyers on a contingency fee basis (95 percent) while defendants almost always pay counsel by the hour or pay a salary if the attorney is "in-house." (See App. A, Tables A.22, A.23.) Perhaps the most significant distinction is that most plaintiffs are involved in a tort case only once in their lives, while litigation is a fact of life for insurers and for defendants who deal constantly with the public.

This section discusses plaintiffs' costs of litigation. We first describe the contingent fee system. We then estimate the total legal fees and expenses paid by plaintiffs in auto and other tort lawsuits. Finally, we consider the value of plaintiffs' time and other resources spent on their litigation.

THE CONTINGENT FEE SYSTEM

Plaintiffs in tort cases in the United States usually pay their lawyers on a contingent fee basis, whereby the lawyer gets a percentage of the compensation, usually after other legal expenses are deducted.[1] Depending on the court and type of tort case, only 2 to 6 percent of individual plaintiffs pay their lawyer on an hourly basis, and only 1 to 2 percent pay on some other basis (such as a flat fee). Organization plaintiffs also usually pay their lawyers on a contingent fee basis, but sometimes pay on an hourly fee basis (12 to 15 percent).[2]

The contingent fee system provides a means for financing lawsuits on behalf of those plaintiffs who might otherwise lack the financial resources to pursue valid claims. Because of the predominance of the contingent fee system, surveys consistently report fees for plaintiff attorneys as a percentage of compensation.[3]

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[1] See, e.g., F. B. MacKinnon, *Contingent Fees for Legal Services*, Aldine Publishing Co., Chicago, Illinois, 1964, p. 4; and P. M. Danzon, *Contingent Fees for Personal Injury Litigation*, The RAND Corporation, R-2458-HCFA, 1980, p. v.

[2] Percentages developed by RAND from University of Wisconsin survey data. Refer to App. A, Tables A.22 and A.23, for details. Note that the University of Wisconsin study defined an organization as anything other than an individual acting in a private capacity; they included as organizations, e.g., "mom and pop" businesses and professionals in solo practice.

Given the variation in contingent fee arrangements, no blanket statement can be made about a "standard" legal services contract for plaintiffs. However, some generalities can be set forth. The simplest contingent fee contract calls for a flat percentage of the compensation paid by defendants regardless of when received. Another common approach is to vary the percentage depending on whether a suit is filed, whether the matter goes to trial, or whether either side appeals the verdict. Another method, which is sometimes required by law, modifies the percentage depending upon the amount of the compensation paid.

A common assumption is that the contingent fee percentage is one-third of the gross compensation paid, but the actual percentage varies. In asbestos and other toxic tort litigation, where it may be difficult to establish the connection between the suspect product and an injury that manifests itself perhaps decades later, the percentage may exceed one-third.[4] On the other hand, if the lawsuit arises from an incident where liability is not contested and a high compensation payment is anticipated, such as in major airline accident death cases, then the plaintiff's fees average substantially less than one-third.[5] However, a one-third fee is common in ordinary tort litigation.

While the final terms of a contingent fee agreement may depend on the strength of the claim and the client's bargaining position, there are some statutory limitations that affect certain types of litigation. When the plaintiff is a minor, some states limit the contingent fee to one-third of the total compensation. As an outgrowth of the "malpractice crisis" of the early 1970s, some states passed legislation tying maximum fee percentages in medical malpractice cases to the amount of compensation. In California, for example, fees are limited to 40 percent of the first $50,000, 33⅓ percent of the next $50,000, 25 percent of the next $100,000, and 10 percent of anything over $200,000.[6] Also, if the United States is a defendant, the Federal Tort Claims Act places a ceiling of 20 percent if the case settles before a lawsuit is filed and 25 percent after commencement of a court action.[7]

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[3] See, e.g., S. Dietz, B. Baird, and L. Berul, "The Medical Malpractice Legal System," in Appendix to the *Report of the Secretary's Commission on Medical Malpractice*, Department of Health, Education, and Welfare, Washington, D.C., 1973; and U.S. Department of Transportation, *Automobile Accident Litigation: A Report of the Federal Judicial Center to the Department of Transportation*, Washington, D.C., April 1970.

[4] J. S. Kakalik et al., *Costs of Asbestos Litigation*, The RAND Corporation, R-3042-ICJ, 1983, p. 36.

[5] Ongoing RAND research being conducted by J. S. Kakalik et al.

[6] California State Assembly Bill AB 1, 1976.

Not all claimants hire lawyers and incur legal fees and expenses, of course. Many claims are settled without lawsuits ever being filed. However, substantial legal fees might be incurred prior to the filing of a suit. Until the time period for filing under the applicable statute of limitations has ended, the commencement of a lawsuit is a tactical decision that is up to the attorney and the client. Indeed, the threat of filing may drive settlement negotiations to a conclusion. Some plaintiffs' attorneys believe it is a good strategy to refrain from filing a suit until a complete settlement package is presented to the opposing party and an unacceptable counter offer is received. This opens the way to amicable negotiation and gives the plaintiffs another "bargaining chip." As a result, some cases are settled with attorney representation and its associated fees but without lawsuits. On the other hand, many attorneys believe that filing a lawsuit often promotes negotiation.

The estimates of plaintiffs' legal fees and expenses that follow in this section are for claims that become lawsuits and include the total legal fees and expenses for those suits no matter when incurred.

PLAINTIFFS' LEGAL EXPENSES OTHER THAN ATTORNEY FEES

In addition to legal fees, plaintiffs usually have to pay for legal expenses such as court filing fees, medical or other expert opinions, and deposition travel and transcripts. These expenses can be substantial, especially when the matter reaches trial and doctors and other experts must be paid for testifying. However, the average expenses account for 10 percent or less of the total legal fees and expenses incurred by the plaintiff. Thus, as a hypothetical example, if the total legal fees plus expenses were 33 percent of compensation, then expenses other than legal fees would average about 3 percent. (See App. A, Tables A.38 to A.43 for details.)

The attorney's fee is usually calculated as a percentage of the compensation after deducting all expenses, although some attorneys' fees are a percentage of gross compensation before deducting expenses. If the suit results in no compensation to the plaintiff, he or she may or may not be required to pay the litigation expenses, although there would be no legal fee.

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[7] 28 United States Code Annotated 2678.

PLAINTIFFS' LEGAL FEES AND EXPENSES IN AUTOMOBILE ACCIDENT LITIGATION

We have already seen that compensation in auto tort cases accounts for approximately half of compensation paid in all tort litigation. As can be expected under the contingent fee system, approximately half of the national total for plaintiffs' attorney fees and associated expenses is also paid in these cases.

Our analysis of the University of Wisconsin survey data from lawsuits closed in 1978 indicates that the ratio of average legal fees *and* expenses to the average compensation received per auto tort case by plaintiffs was 0.31 in state courts and 0.33 in federal district courts. (See App. A, Table A.44.) As mentioned in Sec. II, an estimated 454,000 auto tort cases were terminated in state courts of general jurisdiction and 7,000 auto tort cases were terminated in federal courts in 1985. The average ratio of legal fees and expenses to compensation in state and federal courts combined, weighted by the volume of auto tort compensation in each court,[8] was 0.31.[9]

In Sec. III we estimated that the total compensation paid to plaintiffs nationwide in auto accident litigation in 1985 was in the range of $8.1 billion to $12.3 billion. Multiplying each of those compensation estimates by the estimated 31 percent that went to plaintiffs' attorney fees and legal expenses yields an estimate of $2.5 billion to $3.8 billion nationwide in 1985.

PLAINTIFFS' LEGAL FEES AND EXPENSES IN OTHER LIABILITY LITIGATION

Other (nonauto) torts are diverse, and no surveys other than the one conducted by the University of Wisconsin in 1980 have comprehensive data. However, for certain types of other torts we do have some additional information.

Asbestos personal injury litigation concluded between 1980 and August 1982 had average legal fees and expenses that were 39 percent of average compensation.[10] Asbestos litigation is time-consuming and difficult for plaintiffs' lawyers for reasons discussed above and because the average case has 16 defendants. Consequently, we expect that the 39 percent is higher than the average for all other tort cases combined.

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[8] University of Wisconsin data indicate that the average compensation received by plaintiffs for these cases was $54,248 in federal courts and $12,675 in state courts (1978 dollars), as shown in App. A, Table A.19.

[9] The 31 percent figure includes data for both the predominant contingent fee cases and the much less prevalent noncontingent fee cases.

[10] J. S. Kakalik et al., *Variation in Asbestos Litigation Compensation and Expenses*, The RAND Corporation, R-3132-ICJ, 1984, p. 84.

Major aviation accident death actions, on the other hand, have average legal fees and expenses below 30 percent.[11] These actions often involve high compensation levels, and often do not involve a dispute between plantiffs and defendants over liability; consequently, we expect that the below-30-percent figure is lower than the average for all other tort cases combined.

Medical malpractice lawsuits have average legal fees and expenses of approximately 36 percent, based on a survey of 400 lawyers known to be engaged in medical malpractice litigation in the early 1970s.[12] Of all the areas of tort litigation, medical malpractice requires one of the highest levels of expert evaluation, investigation of the alleged negligence, and resource expenditure to prove one's case. Consequently, we expect that 36 percent is higher than the average for all other tort cases combined.

Our analysis of the University of Wisconsin survey data from lawsuits closed in 1978 provides data on plaintiffs' fees and expenses for all other (nonauto) tort cases combined. As shown in Table A.44 of App. A, the ratio of average legal fees and expenses to the average compensation received per other tort case by plaintiffs was 0.29 in state courts and 0.31 in federal district courts. As shown in Sec. II, an estimated 373,000 other tort cases were terminated in state courts of general jurisdiction, and 32,000 other tort cases were terminated in federal court in 1985. The average ratio of legal fees and expenses to compensation in state and federal courts combined, weighted by the volume of other tort compensation in each court,[13] was 0.30. Note that this 30 percent figure for other tort cases is approximately the same as the 31 percent calculated for auto tort cases.

In Sec. III, we estimated that the total compensation paid to plaintiffs nationwide in other (nonauto) tort litigation in 1985 was in the range of $12.6 billion to $12.8 billion. Multiplying each of those figures by the estimated 30 percent that went to plaintiffs' attorney fees and legal expenses yields an estimate of $3.78 billion to $3.84 billion nationwide in 1985.

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[11] Ongoing RAND research being conducted by J. S. Kakalik et al.

[12] See S. Dietz, B. Baird, and L. Berul, "The Medical Malpractice Legal System," in Appendix to *Report of the Secretary's Commission on Medical Malpractice*, U.S. Department of Health, Education and Welfare, Washington, D.C., 1973. We calculated the 36 percent from their detailed data on contingent fee contracts that specified either a fixed or a variable percentage depending on the stage at which the case closed.

[13] University of Wisconsin data indicate that the average compensation received by plaintiffs for these cases was $38,921 in federal courts and $6,841 in state courts (1978 dollars). (See App. A, Table A.19.)

NATIONAL ESTIMATE OF ALL TORT PLAINTIFFS' LEGAL FEES AND EXPENSES

Combining the results for auto and other tort litigation in state and federal courts of general jurisdiction yields a total of $6.3 to $7.6 billion nationwide in 1985, as detailed in Table 4.1. The average tort lawsuit concluded in 1985 resulted in an estimated $7,300 to $8,800 in plaintiffs' legal fees and expenses, which was an estimated 30 to 31 percent of total compensation paid to plaintiffs.

VALUE OF LITIGANTS' TIME AND EXPENSES OTHER THAN LEGAL FEES AND EXPENSES

In addition to what the plaintiffs pay for legal fees and related expenses, individual plaintiffs spend time on the case, as do employees (other than in-house lawyers) of organization and government plaintiffs. In this section, we estimate the value of that time and miscellaneous expenses other than legal fees and expenses. This includes time spent talking with lawyers, experts, witnesses, court personnel, and others, and includes time spent collecting needed information and reading papers. The expenses are usually minor in comparison with the value of the time spent by the plaintiff or employees of the plaintiff, and might include transportation, reproduction of materials, or any other litigation expense not billed through the plaintiff's lawyer.

The University of Wisconsin surveyed individual, organizational, and government litigants and found that a significant amount of nonlawyer time is spent. (See App. A.) We used data from that survey,

Table 4.1

TOTAL PLAINTIFFS' LEGAL FEES AND EXPENSES PAID IN TORT LITIGATION IN THE UNITED STATES IN 1985
(In $ billion)

Type of Tort Litigation	Estimate 1, Based on Insurance Industry Compensation Data	Estimate 2, Based on Lawsuit Survey Data
Auto torts	2.5	3.8
Other torts	3.8	3.8
Total	6.3	7.6

presented in App. A, Table A.50, weighted by the number of auto and other tort cases in state and federal courts nationwide, and adjusted to 1985 dollars.

In calculating the value of the time individual litigants spent on a case, we made two estimates. The higher of the two estimates valued the litigant's time at the hourly rate of pay of the highest wage earner in the household. The lower of the two estimates valued litigants' time at the minimum wage. This lower estimate assumed that giving up one's leisure time or time that would normally be spent doing household or other work has at least some minimum value.

The fringe benefits and overhead associated with the time spent on litigation by employees of an organization were added to wages to get the total.

The cost of plaintiffs' time and expenses other than legal fees and expenses was an estimated $364 to $663 for an auto tort case and $1,660 to $2,029 for an other tort case in state court in 1985. The comparable costs in federal court were higher, as were legal fees and expenses. The cost of plaintiffs' time and expenses other than legal fees and expenses was an estimated $1,302 to $1,667 for an auto tort case and $1,761 to $2,053 for an other tort case in federal court.

Combining the state and federal court data, weighted by the number of case terminations of each type in each court, yields an estimated $378 to $678 for an auto tort case and $1,668 to $2,031 for an other tort case in all courts of general jurisdiction in the country. Combining auto and other tort cases, again weighted by the number of case terminations of each in 1985, yields an estimate of $981 to $1,311 per tort case.

The above figures represent 1.4 to 2.4 percent of average auto tort compensation paid, 5.3 to 6.4 percent of average other tort compensation paid, and 3.3 to 4.4 percent of all tort compensation paid per lawsuit in 1985. (See Sec. III of this report for compensation paid per case, using the University of Wisconsin database.)

We can estimate the national total value of plaintiffs' time and expenses, other than legal fees and expenses, by using the percentages noted above and the national compensation estimates from Sec. III. Recall that we estimated total compensation paid in tort suits in state and federal courts of general jurisdiction was $20.7 billion to $25.1 billion in 1985. Thus, we estimate a $0.68 billion to $1.10 billion value of plaintiffs' time and expenses other than legal fees and expenses. Details for auto and other tort cases are shown in Table 4.2.

Table 4.2

TOTAL VALUE OF PLAINTIFFS' TIME AND EXPENSES OTHER THAN LEGAL FEES AND EXPENSES IN TORT LITIGATION IN THE UNITED STATES IN 1985
(In $ billion)

Type of Tort Litigation	Estimate 1, Based on Insurance Industry Compensation Data and Low Percent	Estimate 2, Based on Lawsuit Survey Compensation Data and High Percent
Auto torts[a]	0.10	0.29
Other torts[a]	0.58	0.81
Total	0.68	1.10

[a] Numbers have been proportionally reduced so they correctly sum to total.

NATIONAL ESTIMATE OF TORT PLAINTIFFS' TOTAL COSTS

Plaintiffs' total costs of tort litigation in courts of general jurisdiction in the United States in 1985 were an estimated $7.0 to $8.7 billion, of which an estimated $6.3 to $7.6 billion was for legal fees and expenses, and $0.7 to $1.1 billion was the value of plaintiffs' time and other expenses. Details for auto and other tort cases are shown in Table 4.3.

Table 4.3

TOTAL PLAINTIFFS' COSTS OF TORT LITIGATION IN THE UNITED STATES IN 1985
(In $ billion)

	Estimate 1, Based on Insurance Industry Compensation Data			Estimate 2, Based on Lawsuit Survey Data		
Type of Tort Litigation	Legal Fees and Expenses	All Other Costs[a]	Total Costs	Legal Fees and Expenses	All Other Costs[a]	Total Costs
Auto torts	2.5	0.1	2.6	3.8	0.3	4.1
Other torts	3.8	0.6	4.4	3.8	0.8	4.6
Total	6.3	0.7	7.0	7.6	1.1	8.7

[a] All other costs include the value of plaintiffs' time and expenses other than legal fees and expenses.

V. DEFENDANTS' COSTS OF LITIGATION

INTRODUCTION

How much was paid in defendants' litigation costs for tort lawsuits that terminated in 1985? We first discuss defendants' legal fees and related expenses. We then review the claims-processing costs that are incurred by insurers but not allocated to any specific lawsuit. Finally, we consider the value of the time spent by the litigants themselves. As with our review of compensation and plaintiffs' costs of litigation, we turn first to automobile accident litigation and then to other types of tort actions.

DEFENDANTS' LEGAL FEES AND EXPENSES IN AUTOMOBILE ACCIDENT LITIGATION

How much was paid in defendants' legal fees and expenses for auto accident litigation that terminated in 1985 in state and federal courts of general jurisdiction? We make two estimates below. The first starts with national aggregate data from insured and self-insured payments and works down to a $1.05 billion estimate for auto tort litigation nationwide. The second estimate starts with survey data on lawsuits and works up to an estimate of $2.26 billion using data on the number of auto tort lawsuits nationwide.

Auto tort defense legal fees and expenses, calculated primarily using insurance industry data (estimate 1), are 13 percent of compensation; calculated primarily using lawsuit survey data (estimate 2) they are 18 percent of compensation.

Estimate 1: Auto Tort Defendants' Legal Fees and Expenses Based on Insurance Data

While our analysis of University of Wisconsin data indicates that 63 percent of the named defendants in automobile tort cases are individuals (see App. A, Table A.9), the real party at interest in these cases is most often the insurer of the owner of the defendant's vehicle. With 92 percent of all car owners having some form of auto liability insurance, most named defendants leave it to their insurers to handle the defense (indeed, insurance policies often require them to). The actual monetary interest of these individuals is then limited to the possibility of a settlement or verdict in excess of the policy limits. We therefore can get reasonably accurate data on the legal fees and expenses paid to defend auto tort cases by reviewing the records of the auto liability insurance industry. The steps we took to make our estimate based on insurance data are outlined in Fig. 5.1 and are discussed below.

Insurers have a reasonably standardized system of accounting for legal fees, expenses, and other costs. The two common indicators are "allocated loss adjustment expense" (ALAE) and "unallocated loss adjustment expense" (ULAE). ALAE is the extra expense paid and allocated to a specific claim that requires more than routine claim handling (predominantly legal fees and related expenses; see App. D). ULAE is the insurance company expense of processing claims that is not allocated to any specific claim. It is from ALAE data that an estimate of insurance companies' costs of legal fees and related expenses can be made.

As with compensation (loss) data, ALAE figures can be variously reported as either incurred or paid and as either direct or net. Incurred includes all that is actually paid during a year plus changes in reserves for future payments. The distinction between direct and net is whether an adjustment has been made for the costs paid to and reimbursed from reinsurers. Our study will use direct, paid ALAE as an input to our estimate of the total legal expenses of insurers.

Auto Liability Insurance ALAE. A total of $1.14 billion in direct ALAE was paid in 1985 for all auto liability claims with and without lawsuits. (See App. D, Table D.10, and associated text.)

Auto Liability Defendants' Legal Fees and Expenses Paid Outside the Insurance Industry. The data published in insurance industry references usually exclude some "ALAE-equivalent" expenditures by defendants who are not insured, are not fully insured, or are insured by a captive insurer or some other alternative to traditional insurance.

Using data from a study done by Conning and Company, we estimated in Sec. III that the total commercial auto tort compensation paid (including self-insurance, captives, and so forth) was 27 percent larger than the compensation paid by traditional commercial auto insurance companies. We assume that, like compensation, the ALAE paid for commercial auto tort claims and lawsuits are 27 percent larger than ALAE reported by traditional insurers.

Private passenger auto liability direct LAE costs incurred (both allocated and unallocated) were 78 percent of private plus commercial auto

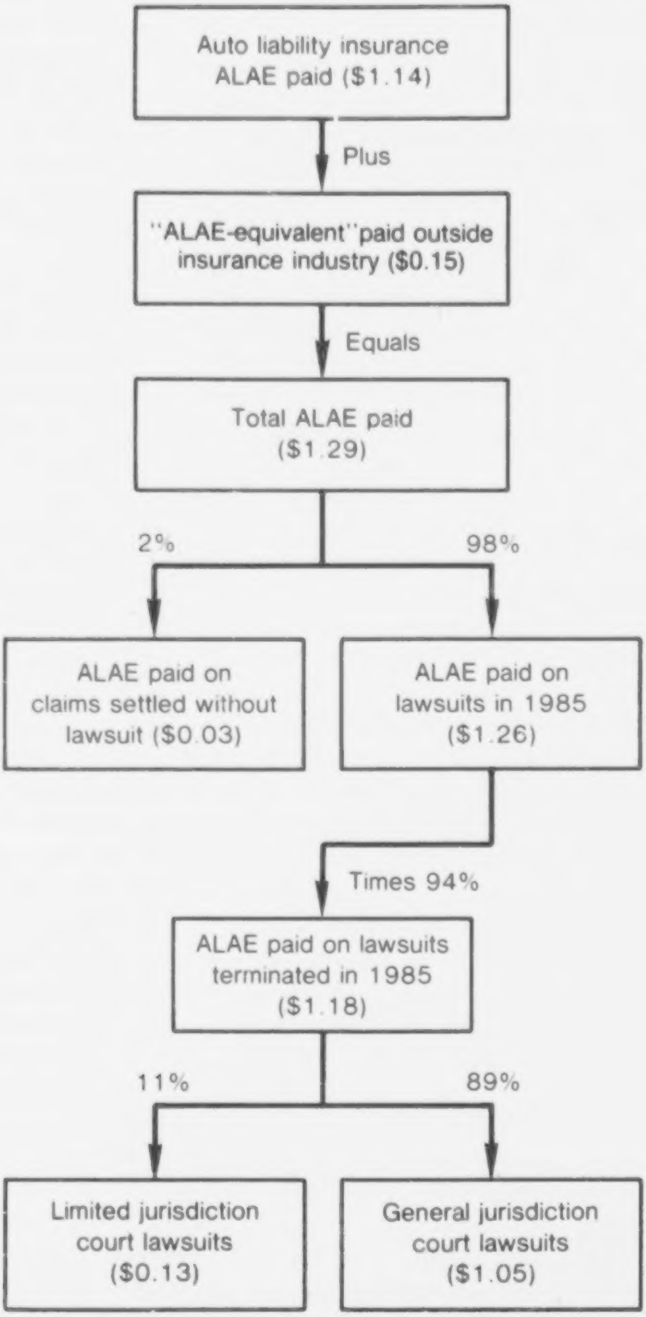
Auto liability insurance ALAE paid ($1.14)
Plus
"ALAE-equivalent" paid outside insurance industry ($0.15)
Equals
Total ALAE paid ($1.29)
2%
98%
ALAE paid on claims settled without lawsuit ($0.03)
ALAE paid on lawsuits in 1985 ($1.26)
Times 94%
ALAE paid on lawsuits terminated in 1985 ($1.18)
11%
89%
Limited jurisdiction court lawsuits ($0.13)
General jurisdiction court lawsuits ($1.05)

Fig. 5.1—Estimation of defendants' legal fees and expenses for auto accident litigation terminated in 1985, based on insurance data (in $ billion)

liability ALAE costs incurred in 1985.[1] Reliable data do not exist on how much "ALAE-equivalent" is paid by private vehicle owners that is not covered by insurance. We know that the 27 percent based on data from the Conning study of commercial vehicles is too high, because individuals are less able to pay compensation and defense litigation costs themselves. On the other hand, individuals who are uninsured or underinsured may hire a lawyer if they are sued, so zero percent is too low. In the absence of reliable data, we assume that total ALAE paid on private auto accident claims is about 9 percent higher than insured ALAE paid (the same assumption was used in Sec. III on compensation paid).

Taking 27 percent of insured commercial auto liability ALAE plus 9 percent of insured private auto liability ALAE paid yields an estimate of approximately $0.15 billion in "self-insured" auto liability ALAE paid in 1985. Adding this to the $1.14 billion in ALAE paid by insurance companies on these auto liability claims yields a total of $1.29 billion.

Auto Tort ALAE Defendants' Legal Fees and Expenses Paid for Litigation Terminated in 1985. How much of that $1.29 billion was paid in auto accident tort litigation terminated in 1985? Data on the percent of auto ALAE devoted to lawsuits are not available. However, later in this section we present data for medical malpractice ALAE (97.9 percent is for lawsuits) and for general liability ALAE (an estimated 98.3 percent is for lawsuits). Assuming that the same 98 percent holds for auto liability ALAE yields an estimate of $1.26 billion in direct ALAE paid for auto accident litigation in 1985.

Since we are estimating expenditures on cases terminated in 1985, we must adjust ALAE. The insurance data on ALAE paid are for payments made during the calendar year 1985, not for cases terminated in 1985. Thus, ALAE includes payments in 1985 on cases that were filed in 1985 (or continued to be open from prior years) but did not terminate in 1985. On the other hand, ALAE payments in 1985 do not include payments before 1985 on cases that terminated in 1985. If the number of cases filed in the civil justice system were constant each year, and if the expenditures per case were constant each year, then the ALAE paid in 1985 should be approximately the same as the ALAE paid for cases that terminated in 1985. However, since both the number of tort cases and the expenditures per case are growing, the ALAE paid in 1985 exceeds that for cases terminated in 1985.

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[1] Calculated from A. M. Best Company, *Best's Aggregates and Averages: Property-Casualty 1986*, Oldwick, New Jersey, 1986, p. 66.

We will adjust ALAE downward by 5 percent to account for growth in the number of auto tort cases, because case terminations were 5 percent less than case filings in 1985 (see Sec. II). Then we will adjust ALAE downward to account for the growth in expenditures, using the 6.3 percent annual growth rate shown in App. D and using the assumption that the ALAE expenditures occur an average of six months before case termination.[2] An annual rate of 6.3 percent applied for six months is 3.2 percent, less six months inflation of 2.2 percent (to correct to constant value dollars), yields an adjustment of 1.0 percent. Combining the 5 percent plus 1 percent adjustments, we estimate that ALAE for auto tort cases terminated was 94 percent of ALAE paid in 1985. The result is an estimated $1.18 billion in defendants' legal fees and expenses paid on auto tort litigation terminated in 1985. Of this $1.18 billion, an estimated $0.15 billion was for property damage liability and $1.03 billion was for bodily injury liability litigation.[3]

Auto Tort Defendants' Legal Fees and Expenses Paid on Litigation Terminated in 1985 in Courts of General Jurisdiction. In Sec. III, we estimated that 89 percent of all auto tort litigation compensation paid is paid on suits in courts of general jurisdiction. Assuming that the same ratio holds for legal fees and expenses, we estimate that $1.05 billion was spent in defense legal fees and expenses in auto tort lawsuits terminated in 1985 in state and federal courts of general jurisdiction.[4]

Estimate 2: Auto Tort Defendants' Legal Fees and Expenses Based on Lawsuit Survey Data

The steps we took to make our estimate based on lawsuit survey data are outlined in Fig. 5.2 and discussed below.

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[2] Using data in App. A, Table A.3, the average time from filing to closure is 16 months. The pattern of expenditures over the life of the case is not reliably known, but we assume some defense expenditure at the start of the case (for response to the suit and initial investigations and motions) followed by a lower average rate of expenditure during the middle time period, and finally a higher level of expenditure near the end of the case life as settlement is reached or the case is prepared for trial. Thus, defense expenditures are made from 0 to 16 months before termination of the average auto tort case; for purposes of adjusting ALAE, we assume the defense expenditures take place an average of six months before case termination.

[3] See App. D for information on the split between bodily injury and property damage for personal and commercial auto liability insurance ALAE.

[4] We do not know the average ratio of legal fees to tort compensation in limited jurisdiction courts, although it is probably lower than it is for the same size case in general jurisdiction court. On the other hand, we know the ratio of legal fees to compensation increases as the level of compensation decreases, which would tend to make the average ratio for limited jurisdiction court cases higher than the average ratio of general jurisdiction court cases. On balance, the $1.05 billion is probably a small overestimate.

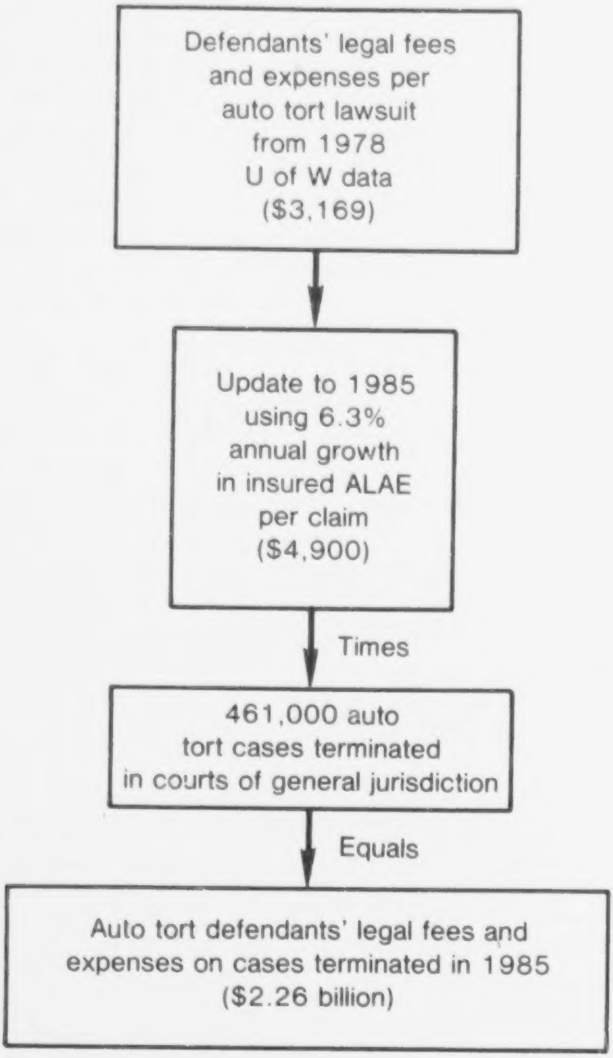

Fig. 5.2—Estimation of defendants' legal fees and expenses for automobile accident litigation terminated in courts of general jurisdiction in 1985, based on lawsuit survey data

Auto Tort Defendants' Legal Fees and Expenses Per Lawsuit. How much was paid in defense legal fees and expenses on the average auto tort lawsuit terminated in 1985? The University of Wisconsin survey data show an estimated $3,169 paid per auto tort lawsuit by all defendants combined in 1978.[5] Updating this to 1985 using a 6.3 percent growth rate yields $4,900 per lawsuit. (See App. D for derivation of this growth rate.)

Auto Tort Defendants' Legal Fees and Expenses Nationwide. Approximately 461,000 auto tort cases were terminated in courts of general jurisdiction nationwide in 1985 (see Sec. II). Multiplying that number of lawsuits by the $4,900 average defense legal costs paid per auto tort lawsuit yields an estimate of $2.26 billion in 1985.

DEFENDANTS' LEGAL FEES AND EXPENSES IN OTHER TORT LITIGATION

We will make two estimates of the amount paid in defendants' legal fees and expenses for other (nonauto) tort litigation that terminated in 1985 in courts of general jurisdiction. Starting with aggregate insurance industry data, we will work down to a $3.68 billion estimate for other tort litigation nationwide. Starting with lawsuit data, we will work up to an estimate of $3.44 billion using data on the number of other tort lawsuits nationwide.

Defense legal fees and expenses as a percent of compensation paid calculated primarily using insurance industry data (estimate 1) are 29 percent, and calculated primarily using lawsuit survey data (estimate 2) are 27 percent.

Estimate 1: Other Tort Defendants' Legal Fees and Expenses Based on Insurance Data

The steps we took to make our estimate based on insurance industry data are outlined in Fig. 5.3 and are discussed below.

Insurance ALAE Paid. Recall that, based on discussions with various insurance industry executives, we understand that the overwhelming majority of tort litigation compensation (and hence ALAE) is paid through the auto liability, medical malpractice, general

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[5] Estimate is based on data from App. A, Tables A.21, A.39, and A.45. Using data from the University of Wisconsin survey from 1978, we estimate that defendants' average legal fee and expenses were $3,126 (26 percent of $12,024 compensation) in state court and $5,961 (13 percent of $45,854 compensation) in federal court. Averaging these weighted by the number of auto tort lawsuits terminated in state and federal court in 1985 yields $3,169.

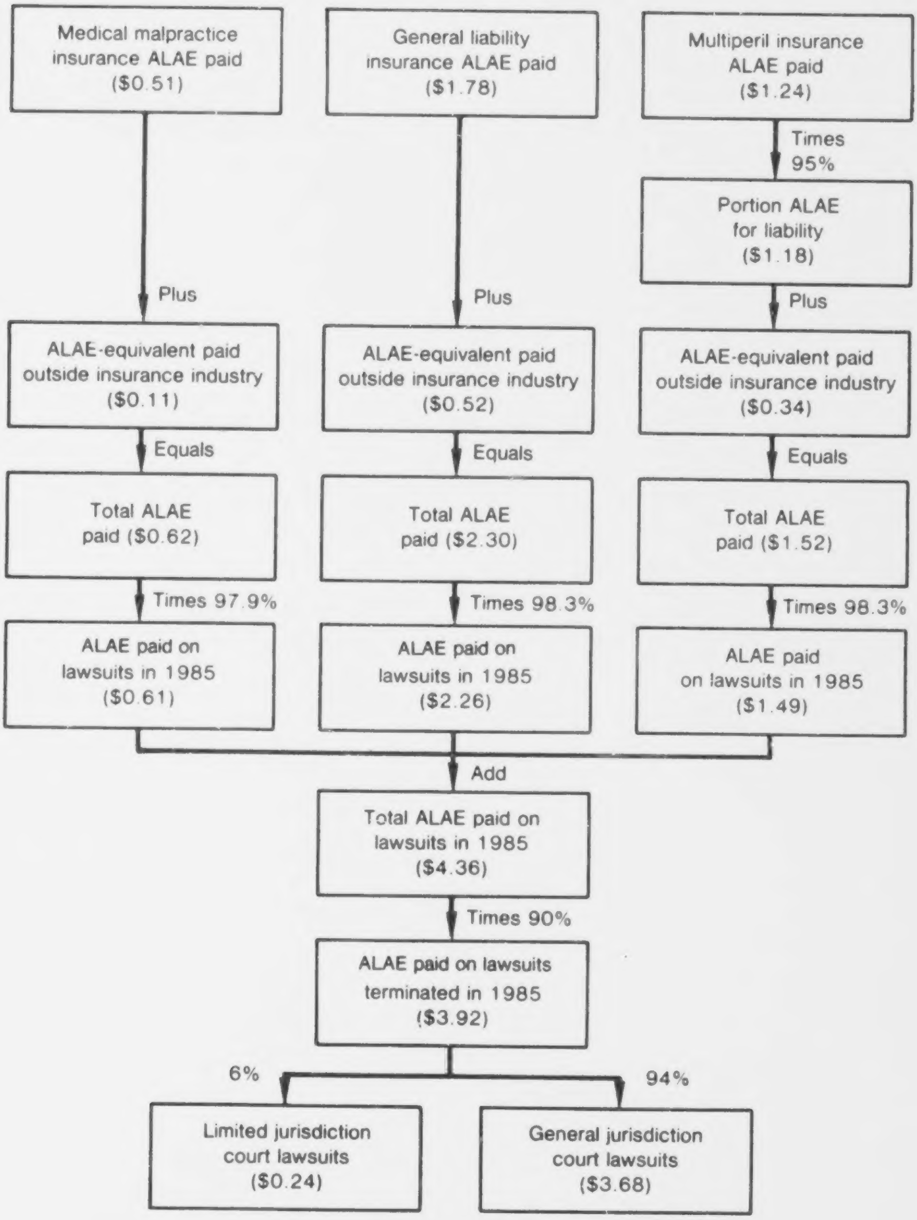
Medical malpractice insurance ALAE paid ($0.51)
General liability insurance ALAE paid ($1.78)
Multiperil insurance ALAE paid ($1.24)
Times 95%
Portion ALAE for liability ($1.18)
Plus
Plus
Plus
ALAE-equivalent paid outside insurance industry ($0.11)
ALAE-equivalent paid outside insurance industry ($0.52)
ALAE-equivalent paid outside insurance industry ($0.34)
Equals
Equals
Equals
Total ALAE paid ($0.62)
Total ALAE paid ($2.30)
Total ALAE paid ($1.52)
Times 97.9%
Times 98.3%
Times 98.3%
ALAE paid on lawsuits in 1985 ($0.61)
ALAE paid on lawsuits in 1985 ($2.26)
ALAE paid on lawsuits in 1985 ($1.49)
Add
Total ALAE paid on lawsuits in 1985 ($4.36)
Times 90%
ALAE paid on lawsuits terminated in 1985 ($3.92)
6%
94%
Limited jurisdiction court lawsuits ($0.24)
General jurisdiction court lawsuits ($3.68)

Fig. 5.3—Estimation of defendants' legal fees and expenses for other (nonauto) tort litigation terminated in 1985, based on insurance data (in $ billion)

liability, commercial multiperil, and homeowners multiperil lines of insurance. We have already reviewed the auto data. Here we will review medical malpractice, general liability, and multiperil insurance data. In making our total estimate of tort litigation defendants' costs, we have not undertaken the difficult task of ferreting out the relatively small amounts of tort litigation costs that may be buried in other lines of insurance.

A total of $511 million in direct ALAE was paid in 1985 for all medical malpractice claims with and without lawsuits.[6]

For the general liability line of insurance, an estimated $1.78 billion was paid in 1985 in direct ALAE for all claims with and without lawsuits.[7]

For the multiperil lines of insurance, an estimated $1.24 billion was paid in direct ALAE in 1985.[8] Because these multiperil policies are not exclusively written for paying tort claims, we must estimate the percentage of ALAE that is used for that purpose. Discussions with Insurance Services Office (ISO) personnel indicated that precise data do not exist for multiperil insurance, but that as in other lines of insurance, nearly all ALAE is for legal fees and expenses, and nearly all multiperil litigation is over liability instead of fire, theft, or some other peril. We assume that approximately 95 percent of all multiperil insurance ALAE is for liability; we assume the remaining 5 percent is predominantly for miscellaneous nonlitigation ALAE for the fire, theft, and other nonliability components of the multiperil insurance. Thus, of the $1.24 billion in direct ALAE paid in 1985, an estimated $1.18 billion was for liability.

Other Tort Defendants' Legal Fees and Expenses Paid Outside the Insurance Industry. For medical malpractice, A. M. Best Company's and ISO's insurance statistics provide information on costs of the commercial insurers and many of the physician-owned insurers but do not report complete data regarding Joint Underwriting Associations, Patient Compensation Funds, Catastrophe Funds, and the self-insured hospitals, government agencies, and physicians that make up the balance of liability compensation sources. We must turn to other sources for those data.

Using A. M. Best's figures as a starting point, Milliman and Robertson, Inc., estimated the total medical malpractice insurance premiums

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[6] See App. D, Table D.11, and associated text.

[7] See Table D.13 and associated text.

[8] See Table D.15 and associated text.

(including "self-insured") in the United States for 1984.[9] Their total is 22 percent larger than the amount reported by A. M. Best Company sources. Accordingly, the reported insurance industry medical malpractice data must be increased to obtain a national total. Using the ratio of 1.22 to 1 described above, and assuming that direct paid ALAE rises proportionally with direct premiums for all types of medical malpractice insurance, the nationwide direct ALAE paid for medical malpractice claims was an estimated $623 million in 1985.

Our estimated total of $2.96 billion in defendants' ALAE paid by insurers through general liability and multiperil policies also needs to be increased to account for "ALAE-equivalent" costs paid by the captive-insured, self-insured, uninsured, and government defendants. Again, we can use the results of the Conning and Company survey of the real extent of the property and casualty commercial market.[10] We estimated in Sec. III that the total nonauto liability compensation paid (including self-insurance, captive insurers, and so forth) was 29 percent larger than the compensation paid by traditional insurance companies. We assume that, like compensation, the total legal fees and expenses paid for nonauto tort litigation are 29 percent larger than ALAE reported by traditional insurers. Multiplying 29 percent by the $2.96 billion in general and multiperil insured ALAE yields an estimated $0.86 billion in "self-insured" defendants' "ALAE-equivalent" costs paid in 1985.

Other Tort Defendants' Legal Fees and Expenses Paid for Litigation Terminated in 1985. Adding the total ALAE paid in 1985 for medical malpractice, general liability, and multiperil liability gives a total of $4.44 billion. Next, we must estimate the portion of that total spent for other tort litigation, excluding expenditures for claims settled without a lawsuit.

For medical malpractice, the 1974 closed-claim survey conducted by the Insurance Services Office reported the allocated expenses of defending a claim (see Table 5.1). Note that the average defendants' costs were 29.6 percent of the average compensation paid, and that lawyer fees were 87.2 percent of the total costs.[11] The study found that

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[9] Milliman and Robertson, Inc., *Actuarial Analysis of American Medical Association Tort Reform Proposals*, New York, September 1985.

[10] Conning and Company, *The Changing Property and Casualty Commercial Lines Markets*, Hartford, Connecticut, December 1980, p. 46. Conning and Company included the following in "other" liability: general liability, medical malpractice, and 40 percent of commercial multiperil insurance.

[11] Defendants' costs in medical malpractice cases, unlike those for auto liability, constitute a comparatively substantial percentage of total compensation. Defendants in medical malpractice litigation have far more control over negotiations than do their counterparts in auto tort cases, and there is an increased tendency to withhold consent

Table 5.1

DATA ON DEFENDANTS IN MEDICAL MALPRACTICE CLAIMS

Claim Disposition[a]	Average Compensation ($1974)	Average ALAE ($1974)	Average ALAE as Percent of Average Award	Lawyer Fees as Percent of ALAE
Verdict	9,715	6,231	64.1	87.5
Settled	10,156	2,604	25.6	87.1
Not in suit	1,892	95	5.0	74.8
All claims in suit[b]	10,108	2,995	29.6	87.2

SOURCE: Insurance Services Office, *Report of the All-Industry Committee Special Malpractice Review: 1974 Closed Claim Survey: Technical Analysis of Survey Results*, American Insurance Association, New York, 1976, Tables 11.2a and 11.4a, pp. 59–61.

[a] Untrended data including zero compensation claims.

[b] Weighted average using 595 claims tried to verdict and 4,927 claims in suit that did not reach verdict.

97.9 percent of all ALAE paid was for claims in suit; only 2.1 percent was for claims without an associated lawsuit.[12]

The portion of the $623 million in medical malpractice ALAE that is for claims with lawsuits is estimated by using the 97.9 percentage from the ISO closed-claim survey described above. Accordingly, lawsuit-related defendants' legal fees and expenses were estimated to be $610 million in 1985.

For general liability insurance, we estimate the fraction of ALAE spent on lawsuits using the same method we used for compensation in Sec. III. That is, we assume that all claims paid with an ALAE greater than $1,000 involved a lawsuit and that one-half of all the claims paid with an ALAE of $1 to $1,000 also were lawsuits. (See Table D.14 and associated text.) An estimated 98.3 percent of the general liability claim ALAE paid in 1984 was for lawsuits. Given that $2.30 billion was paid in direct ALAE (and the ALAE-equivalent for self-insured defendants) in 1985, we estimate that $2.26 billion of that amount was associated with lawsuits.

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from potential settlement agreements that might adversely affect a physician's or surgeon's professional reputation. As a result, cases go further toward trial and incur greater defense costs.

[12] Calculated from data in Table 5.1 plus the fact that the ISO study collected data on 3,647 claims not in suit (p. D-33).

For the liability portion of multiperil insurance, we assume the percentage of ALAE that went for lawsuits was the same as it was for the general liability line of insurance (98.3 percent). (See App. D for a discussion of this assumption.) This yields an estimated $1.49 billion in ALAE paid on lawsuits in 1985 in the multiperil lines of insurance and the ALAE-equivalent costs of self-insurance.

Adding the amounts for medical malpractice, general liability, and the liability portion of multiperil insurance yields a total of $4.36 billion in ALAE paid on lawsuits in 1985.

We must adjust the insurance data on ALAE paid in calendar year 1985 to obtain an estimate for other tort cases terminated in 1985; the logic for the adjustment is the same as that which we used for auto tort cases earlier in this section. Since other tort case terminations are 95 percent of filings, we will adjust ALAE downward by 5 percent to account for the growth in the number of other tort cases (see Sec. II). Then we will adjust ALAE downward to account for the growth in expenditures, using a 15 percent annual growth rate (see App. D), and the assumption that the ALAE expenditures occur an average of six months before case termination. An annual rate of 15 percent for six months is 7.5 percent, less six months inflation of 2.2 percent (to correct to constant value dollars) yields an adjustment of 5.3 percent. Combining the 5 percent and 5.3 percent adjustments, we estimate that ALAE for other tort cases terminated was 90 percent of ALAE paid in 1985. Thus, we estimate that $3.92 billion was paid in ALAE for other tort lawsuits terminated in 1985.

Other Tort Defendants' Legal Fees and Expenses Paid on Litigation Terminated in 1985 in Courts of General Jurisdiction. How much of that $3.92 billion was paid for other tort lawsuits in state and federal courts of general jurisdiction? In Sec. III we estimated that 94 percent of all litigation compensation paid is paid on suits in courts of general jurisdiction. Assuming that the same ratio holds for legal fees and expenses, we estimate that $3.68 billion is spent in defense legal fees and expenses on other (nonauto) tort lawsuits in courts of general jurisdiction.

Estimate 2: Other Tort Defendants' Legal Fees and Expenses Based on Lawsuit Survey Data

The steps we took to make this estimate are outlined in Fig. 5.4.

Other Tort Defendants' Legal Fees and Expenses Per Lawsuit. How much was paid in defense legal fees and expenses on the average other tort lawsuit terminated in 1985? The University of

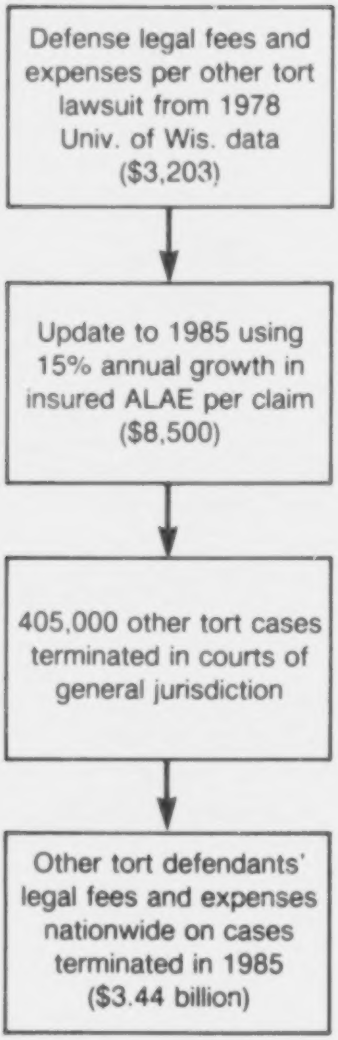
Defense legal fees and expenses per other tort lawsuit from 1978 Univ. of Wis. data ($3,203)
Update to 1985 using 15% annual growth in insured ALAE per claim ($8,500)
405,000 other tort cases terminated in courts of general jurisdiction
Other tort defendants' legal fees and expenses nationwide on cases terminated in 1985 ($3.44 billion)

Fig. 5.4—Estimation of defendants' legal fees and expenses for other (nonauto) tort litigation terminated in courts of general jurisdiction in 1985, based on lawsuit survey data

Wisconsin survey data show an estimated $3,203 paid per other tort lawsuit terminated in 1978.[13]

In recent years, medical malpractice ALAE per claim has grown 15.7 percent annually, while total general liability ALAE has grown at a 15.5 percent rate and multiperil ALAE has grown at a 14.9 percent rate. (See App. D, Tables D.12, D.13, D.15, and associated text.) Based on the available data, we estimate the growth rate in defense litigation costs for all other tort cases combined to be approximately 15 percent. Updating the 1978 data to 1985 using the 15 percent estimated annual growth rate in the average defense legal fees and expenses paid per other tort claim yields $8,500 per lawsuit.

Other Tort Defendants' Legal Fees and Expenses Nationwide. Approximately 405,000 other tort cases were terminated in courts of general jurisdiction nationwide in 1985 (see Sec. II). Multiplying that number of lawsuits by the average defense legal costs paid per other tort lawsuit yields an estimate of $3.44 billion in 1985.

NATIONAL ESTIMATE OF ALL TORT DEFENDANTS' LEGAL FEES AND EXPENSES

Combining the results for auto and other tort litigation terminated in state and federal courts of general jurisdiction yields a total of $4.7 billion to $5.7 billion nationwide in 1985. We again were gratified that our two estimation methods (working down from aggregate insurance industry data and working up from individual lawsuit survey data) yielded similar results (see Table 5.2).

The average growth rate in defendants' legal costs paid per claim over the past five years has been about 6 percent for auto and 15 percent for other tort claims. The average tort lawsuit concluded in 1985 resulted in an estimated $5,400 to $6,600 in defendant's legal fees and expenses.

CLAIMS-PROCESSING COSTS

In addition to defendants' legal fees and related expenses that constitute about 98 percent of what insurance companies call "allocated

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[13] Estimate is based on data from App. A, Tables A.21, A.39, and A.45. Using overall data from the University of Wisconsin survey from 1978, we estimate that defendants' average legal fees and expenses were $2,809 (37 percent of $7,593 compensation) in state courts and $7,791 (18 percent of $43,288 compensation) in federal courts. Averaging these weighted by the number of other tort lawsuits terminated in state and federal courts in 1985 yields $3,203.

Table 5.2

TOTAL DEFENDANTS' LEGAL FEES AND EXPENSES PAID IN TORT LITIGATION TERMINATED IN COURTS OF GENERAL JURISDICTION IN 1985
(In $ billion)

Type of Tort Litigation	Estimate 1, Based on Insurance Industry Data	Estimate 2, Based on Lawsuit Survey Data
Auto torts	1.05	2.26
Other torts	3.68	3.44
Total	4.73	5.70

loss adjustment expenses" (ALAE) for liability claims, the insurers also have "unallocated loss adjustment expenses" (ULAE). As discussed earlier in this section, the unallocated expenses are insurance company salaries, expenses, and overhead of processing claims (and suits) that are not allocated by the insurer to any specific claim.

When someone is injured or suffers property damage and files a claim for liability compensation, the insurer's claims department personnel will process the claim, ask for information about the incident and the injury or damage, and attempt to settle the claim; the associated costs are "unallocated" costs. If unsuccessful in arriving at a mutually acceptable settlement with the claimant whereupon a suit is filed, or if the initial claim is accompanied by a lawsuit, then legal counsel will spend time on the claim (and the associated costs will be recorded as "allocated" costs). However, the insurers' claims-processing personnel will continue to assist with the lawsuit; they still will handle paperwork and accounting matters, monitor and assist the lawyer, and follow settlement negotiations, since the insurer must approve any settlement negotiated by the lawyer. Thus, claims-processing costs (ULAE) are incurred both before and after filing a suit.

The ULAE are reported by insurers for all claims and lawsuits combined for each line of insurance. The total ULAE paid in 1985 were $2.00 billion for auto liability, $0.12 billion for medical malpractice,

$0.31 billion for general liability, and $0.35 billion for the liability portion of multiple-peril insurance policies. (See App. D, Table D.16.) Thus, the total ULAE in 1985 for all liability claims and suits was an estimated $2.78 billion, of which $2.00 billion was for auto liability claims and suits.

We adjusted this number upward to account for the equivalent claims-processing costs spent by "self-insured" people (using the same method and references we used earlier in this section for ALAE). The total rises to $3.26 billion, of which $2.26 billion was for auto liability claims and suits.

No industry-wide data are collected on how much of the total was for claims that were in suit, but we were able to locate one very detailed study by a large insurer.[14] That study indicated that the average auto claim in suit required 1.62 times as much effort by claims-processing personnel as the average auto claim not in suit. The average other (nonauto) injury claim in suit required 2.15 times as much effort by claims-processing personnel as the average other injury claim not in suit. In light of our understanding of the claims process, this seems reasonable.

Using the above ratios plus the fraction of claims in suit[15] yields an estimate that the ULAE for claims in suit totaled $0.88 billion in 1985, of which $0.44 billion was for auto liability claims in suit. Now we adjust these ULAE dollars spent in 1985 to ULAE dollars spent on lawsuits terminated in 1985, using the same method we used to adjust ALAE.[16] The resulting estimate is that ULAE for lawsuits that terminated in 1985 were $0.81 billion, of which $0.41 billion was for auto torts.

Assuming that, like compensation, 92 percent of all ULAE for claims in suit goes for claims in suit in courts of general jurisdiction, we estimate that $0.75 billion in ULAE was spent for claims in suit in general jurisdiction courts, of which $0.37 billion was for auto liability.

The average claims-processing cost (ULAE) per tort lawsuit terminated in 1985 was $866. Claims process costs (ULAE) amount to 4 percent of compensation paid in suit.

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[14] These data were collected in a "time and motion" study of how much time claims personnel spent on various required tasks for various types of claims. One of the factors this large insurer considered was whether the claim was in suit. Cost figures developed included salary, fringe benefits, overhead, and miscellaneous claims-processing expenses. The data are unpublished, and the insurer has requested anonymity.

[15] Based on data presented previously, approximately 13 percent of all auto claims and 27 percent of all general liability claims are in suit.

[16] The auto tort numbers were reduced 6 percent and the other tort numbers were reduced 10 percent.

VALUE OF LITIGANTS' TIME AND EXPENSES OTHER THAN LEGAL FEES AND EXPENSES

As we saw with plaintiffs in Sec. IV, defendants such as individuals and employees (other than in-house lawyers) of organizational and government agency defendants spend a considerable amount of time and resources over and above what the litigants and their insurers pay for legal fees and related expenses. In this section, we estimate the value of that time and miscellaneous expenses other than legal fees and expenses by defendants. This includes time spent talking with lawyers, experts, witnesses, court personnel, and others, and includes time spent collecting needed information and reading papers.

We used data from the University of Wisconsin survey of individual, organizational, and government litigants presented in App. A, Table A.51, weighted by the number of auto and other tort cases terminated in state and federal court and adjusted to 1985 dollars. (See App. A for details.)

In calculating the value of the time that individual defendants spent on a case, we made two estimates. The higher of the two estimates valued the litigants' time at the hourly rate of pay of the highest wage earner in the household. The lower of the two estimates valued litigants' time at the minimum wage. This lower estimate assumed that giving up one's leisure time or time that would normally be spent doing household or other work has at least some minimum value.

The fringe benefits and overhead associated with the time spent on litigation by employees of an organization were added to wages to get the total.

Defendants' time and expenses other than legal fees and expenses were valued at an estimated $1,940 to $2,884 for an auto tort case and $5,877 to $6,223 for an "other" tort case in state court in 1985. The comparable costs in federal court were higher, as were legal fees and expenses. The cost of defendants' time and expenses other than legal fees and expenses was an estimated $3,486 to $4,371 for an auto tort case and $9,017 to $9,312 for an other tort case in federal court.

Combining the state and federal court data, weighted by the number of cases of each type terminated in each court, yields an estimated $1,963 to $2,907 for an auto tort case and $6,125 to $6,467 for an other tort case in all courts of general jurisdiction in the country. Like legal fees, these other litigant costs are substantially less for an auto tort case than for an other tort case.

These data on the value of defendant time and other expenses are the best information available on the subject but are of limited quality for the following reasons: (1) If individual defendants were insured, the insurer rather than the individual was interviewed by the University of Wisconsin; (2) if an insurer was interviewed, the data were aggregated with data from other (noninsurer) organization defendants. This inclusion of some insurer data on time spent on the cases results in some unknown amount of claims-processing costs being included. To avoid double-counting claims-processing costs by insurers, we must adjust the value of defendant time downward. From our analysis of claims-processing costs (ULAE) earlier in this section, we know the average spent per tort lawsuit terminated in 1985 was $866. The correct but unknown adjustment to avoid double-counting is between $0 and $866. In the absence of reliable data, we use the mid-point of $433 per lawsuit.

After the correction to avoid double-counting, we estimate the value of defendants' time and expenses (other than legal fees and related expenses) to be $1,530 to $2,474 for an auto tort case and $5,692 to $6,034 for an other tort case. Combining auto and other tort cases, again weighting by the number of case terminations of each in 1985, yields an estimate of $3,476 to $4,139 per tort case.

The above figures represent 6 to 9 percent of average auto tort compensation paid, 18 to 19 percent of average other tort compensation paid, and 12 to 14 percent of all tort compensation paid per lawsuit terminated in 1985.[17]

We can make an estimate of the national total value of defendants' time and expenses, other than legal fees and expenses, by using the low and high percentages in the ranges noted above and the two national compensation estimates from Sec. III. Recall that our estimate of total compensation paid in tort suits in state and federal courts of general jurisdiction was $20.7 billion to $25.1 billion in 1985. Thus, we estimate a $2.5 billion to $3.5 billion value of defendants' time and expenses other than legal fees and expenses. Details for auto and other tort cases are shown in Table 5.3.

NATIONAL ESTIMATE OF TORT DEFENDANTS' TOTAL COSTS

Defendants' total costs of tort litigation terminated in courts of general jurisdiction in the United States in 1985 were an estimated $8.0 to $10.0 billion, of which an estimated $4.7 to $5.7 billion was for legal fees and expenses, $0.8 billion was for insurance company costs of pro-

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[17] See Sec. III for compensation paid per case using the University of Wisconsin data.

Table 5.3

TOTAL VALUE OF DEFENDANTS' TIME AND EXPENSES OTHER THAN LEGAL FEES AND EXPENSES IN TORT LITIGATION IN THE UNITED STATES IN 1985
(In $ billion)

Type of Tort Litigation	Estimate 1, Based on Insurance Industry Compensation Data and Low Percent	Estimate 2, Based on Lawsuit Survey Compensation Data and High Percent
Auto torts[a]	0.4	1.1
Other torts[a]	2.1	2.4
Total	2.5	3.5

[a]Numbers have been proportionally reduced so they correctly sum to total.

cessing claims in suit, and $2.5 to $3.5 billion was the value of defendants' time and other expenses. Details for auto and other tort cases are shown in Table 5.4.

Table 5.4

TOTAL DEFENDANTS' COSTS OF TORT LITIGATION IN THE UNITED STATES IN 1985
(In $ billion)

	Estimate 1, Based on Insurance Industry Data			Estimate 2, Based on Lawsuit Survey Data		
Type of Tort Litigation	Legal Fees and Expenses	All Other Costs[a]	Total Costs	Legal Fees and Expenses	All Other Costs[a]	Total Costs
Auto torts	1.0	0.8	1.8	2.3	1.5	3.8
Other torts	3.7	2.5	6.2	3.4	2.8	6.2
Total	4.7	3.3	8.0	5.7	4.3	10.0

[a]Includes insurance company claim-processing costs for claims in suit, plus the value of defendants' time and expenses other than legal fees and expenses.

VI. COURT EXPENDITURES

Court expenditures are defined as those by any level of government (federal, state, or local) for processing tort cases in the court system. However, we have not included here any expenditures for government attorneys or other noncourt government personnel who act because a government agency is a party in the tort litigation.

We include expenditures related to processsing court cases even if they do not appear directly in court budgets—for example, expenditures for certain fringe benefits such as retirement, for administrative services such as accounting, for facility construction and operation, and for certain types of personnel such as bailiffs who are often in a law enforcement agency budget. We included those expenditures by other agencies in the total of all government expenditures required to process tort cases.

A previous RAND report estimated that the state court expenditure per tort case terminated in FY 1982 was $407, and the U.S. District Court expenditure per tort case terminated was $1,740.[1]

The above figures must be updated to 1985 dollars and the 1985 number of tort case terminations. We used the change in the average judge's salary from 1982 to 1985 as an estimate of the change in all court expenditures. The great majority of the court expenditures are personnel-related, and we are assuming that clerical and other support personnel salaries rose at about the same rate as the average judge's salary. In state court, the average judge's salary in 1982 was $45,633.[2] By 1985, it had risen to $60,064.[3] In U.S. District Court, the average judge's salary in 1982 was $70,300.[4] By 1985, it had risen to $78,700.[5]

Using the change in judicial salaries to update the 1982 court expenditures per case yields an estimated $535 per case filed in state court in 1985, and $1,948 per case filed in federal court in 1985. These numbers are low because most cases settle without consuming much judicial time. Court expenditures per trial are much higher, but tried cases are a small minority of all terminated cases.[6] To avoid double-counting the amount paid by the litigating parties in court fees, we subtract an estimated $75 per case in court fees.[7]

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[1] J. S. Kakalik and R. L. Ross, *Costs of the Civil Justice System: Court Expenditures for Various Types of Civil Cases*, The RAND Corporation, R-2985-ICJ, 1983, p. xvii.

[2] Ibid., p. xv.

[3] National Center for State Courts, *State Court Journal*, Vol. 10, No. 1, Winter 1986, p. 26.

[4] Kakalik and Ross, p. x.

[5] Interview with Marion Ott, Administrative Office of the United States Courts, Washington, D.C., July 14, 1986.

The national expenditure by government on processing tort cases in the court system may be estimated by multiplying the dollars per case shown above times the number of tort cases terminated in 1985 (see Sec. II). Recall that we estimated 827,000 tort case terminations in state courts of general jurisdiction and 39,000 tort case terminations in U.S. District Court. Thus, the total court expenditure nationwide, net of court fees paid by tort litigants, is an estimated $453 million. Compared with the private costs of tort litigation discussed in Secs. IV and V, these public costs of approximately $0.5 billion are very low.

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[6] Kakalik and Ross, p. xiv.

[7] Ibid., p. xiii.

VII. OUR NATION'S BILL: TOTAL COSTS AND COMPENSATION PAID IN TORT LITIGATION

We estimate that the total expenditure nationwide for tort litigation terminated in state and federal courts of general jurisdiction in 1985 was between $29 billion and $36 billion. These expenditures for the approximately 866,000 tort lawsuits terminated annually in state and federal courts of general jurisdiction[1] include compensation paid to plaintiffs, legal fees and related expenses of both plaintiffs and defendants, insurance company claims-processing costs for claims in suit, the value of litigants' time spent, and the costs of operating the court system for these cases.

This total excludes all expenditures for small claims and for tort litigation in courts of limited jurisdiction. Compensation paid in limited jurisdiction courts was an estimated $1.8 billion in 1985, not counting legal fees and expenses and small claims compensation.

This total also excludes expenditures for insured and self-insured liability claims that did not involve lawsuits. Compensation paid on liability claims that did not involve lawsuits was an estimated $22.5 billion in 1985,[2] not counting the costs of processing those claims or the other costs of operating the insurance system.

Since our $29 billion and $36 billion estimates both use information of varying accuracy from several sources, the estimates cannot be regarded as exact.[3] However, we are confident that they are reasonably accurate because they produced comparable results even though they employed different methods and databases.

We believe the true value for expenditures for tort litigation terminated in general jurisdiction courts in 1985 lies between our two estimates. The $29 billion estimate, based primarily on insurance industry data, is probably somewhat low because it includes data from the major lines of insurance that pay for liability litigation (the auto liability, medical malpractice, general liability, and multiperil insurance lines) but excludes the relatively small liability expenditures buried in other lines of insurance (such as the marine and boiler and machinery lines). The $36 billion estimate, based primarily on lawsuit survey data, is probably somewhat high because the Civil Litigation Research Project's survey response rate was somewhat higher for lawsuits with higher amounts of litigation activity (and presumably higher costs).[4] Lacking sufficient data to adjust our estimates to account for these factors, we present our two estimates. It is reasonable to conclude that the correct value lies somewhere between them.

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[1] Approximately 866,000 tort lawsuits were terminated in state and federal courts of general jurisdiction in 1985: 827,000 in state and 39,000 in federal courts. Tort litigation related to motor vehicles constituted just over half of the total case terminations.

[2] Including auto liability, medical malpractice, general liability, and the liability portion of multiperil insurance.

[3] The nature of the data precluded an accurate mathematical assessment of the variance of the estimates.

Of the various components in our total estimates, we are less confident about the accuracy of the self-insurance dollars and the litigants' time-values than we are about the other expenditures. Insurance expenditures are systematically and comprehensively tabulated, but self-insurance data are not (see Sec. III for details). The survey of litigants concerning their time expenditures had a relatively small number of responses (see App. A).

TOTAL COSTS OF TORT LITIGATION

Of the $29 to $36 billion, $16 to $19 billion was spent for the various costs of the tort litigation system, not including the net compensation paid to plaintiffs.

The breakdown of the total costs for defendants, plaintiffs, and the courts is as follows:

Defendants' Costs of Litigation

Defendants' total costs for tort litigation terminated in courts of general jurisdiction in the United States in 1985 were an estimated $8 to $10 billion: $4.7 to $5.7 billion for legal fees and related expenses, $0.8 billion for insurance company costs of processing claims in suit, and about $2.5 to $3.5 billion representing the value of defendants' nonlawyer time and other expenses. (See Table 7.1.)

The average tort lawsuit closed in 1985 resulted in an estimated $5,400 to $6,600 in defendants' legal fees and related expenses.

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[4] See David M. Trubek et al., *Civil Litigation Research Project Final Report:* Vol. 1, *Studying the Civil Litigation Process: The CLRP Experience*, University of Wisconsin Law School, Madison, March 1983, p. I-120. Court records showed that the median case in the sample had 11 legal "events," while there were 13 legal events for the median case with a completed lawyer interview.

Table 7.1

DEFENDANTS' COSTS OF TORT LITIGATION TERMINATED IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985
(In $ billion)

Type of Cost	Estimate 1, Primarily Based on Insurance Industry Data	Estimate 2, Primarily Based on Lawsuit Survey Data
Defendants' legal fees and expenses	4.7	5.7
Claims-processing cost for lawsuits	0.8	0.8
Value of defendants' time and other expenses	2.5	3.5
Total	8.0	10.0

Plaintiffs' Costs of Litigation

Out of the total compensation that plaintiffs received, they paid $6 to $8 billion in legal fees and expenses, and the value of plaintiffs' time spent on the litigation was about $1 billion. (See Table 7.2.)

The average tort lawsuit concluded in 1985 resulted in an estimated $7,300 to $8,800 in plaintiffs' legal fees and expenses, which was approximately 30 to 31 percent of total compensation paid to plaintiffs.

Court Expenditures

Court expenditures are defined as those made by any level of government (federal, state, or local) for processing tort cases in the court system. The total court expenditure nationwide, net of court fees paid by tort litigants, was an estimated $0.5 billion.

COMPENSATION PAID IN COMPARISON WITH TOTAL COSTS OF TORT LITIGATION

Of the $29 to $36 billion total national expenditure in 1985, plaintiffs received $21 to $25 billion in total compensation, or about $14 to $16 billion in net compensation, after deducting all their litigation costs. (See Table 7.3.)

Table 7.2

PLAINTIFFS' COSTS OF TORT LITIGATION TERMINATED IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985
(In $ billion)

Type of Cost	Estimate 1, Primarily Based on Insurance Industry Data	Estimate 2, Primarily Based on Lawsuit Survey Data
Plaintiffs' legal fees and expenses	6.3	7.6
Value of plaintiffs' time and other expenses	0.7	1.1
Total	7.0	8.7

Table 7.3

COMPENSATION PAID IN COMPARISON WITH TOTAL COSTS OF TORT LITIGATION TERMINATED IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985
(In $ billion)

Type of Expenditure	Plaintiffs	Defendants	Courts	Total
Total compensation	20.7–25.1	20.7–25.1	NA	NA
Total costs of litigation	7.0–8.7	8.0–10.0	0.5	15.5–19.2
Net compensation	13.7–16.4	NA	NA	13.7–16.4
Total expenditure	NA	28.7–35.1	0.5	29.2–35.6

NOTES: The first number in the range is the RAND estimate primarily based on insurance industry data; the second is the RAND estimate primarily based on lawsuit survey data.

NA = not applicable.

The average total compensation paid per lawsuit concluded in 1985 in a court of general jurisdiction was in the range of $24,000 to $29,000.

To deliver this $14 to $16 billion in net compensation, the tort litigation system expended $16 to $19 billion in transaction costs. These costs included $11 to $13 billion in combined defendants' and plaintiffs' legal fees and expenses, $0.5 billion in court expenditures, and an additional $4 to $5 billion in the value of the time spent by litigants and their employees.

In sum, of all the money paid in compensation and legal fees and related expenses of tort litigation, the injured plaintiff receives approximately 56 percent in net compensation. The litigation system consumes the rest. If we add the value of the time spent by the litigants to the costs, the injured parties' net compensation sinks to 46 percent of the total expenditures.[5] All the components of expenditures are shown graphically in Fig. 7.1.

COMPARISON OF AUTO TORT AND OTHER TORT LITIGATION EXPENDITURES

How do litigation costs and compensation differ between torts involving motor vehicles and all other torts? Auto torts accounted for about half of all tort filings in courts of general jurisdiction in 1985, and also about half of the total compensation paid. See Table 7.4 for a summary and Tables 7.5 and 7.6 for details on auto and other torts, respectively.

The legal fees and expenses paid by plaintiffs as a percent of total compensation were essentially the same for auto tort (31 percent) and other tort cases (30 percent). However, defendants' costs of litigation differ significantly. For auto tort cases, which are often straightforward, defense legal fees and expenses were an estimated 16 percent of total compensation. For other (nonauto) tort cases, which are often more complex, defense legal fees and expenses were much higher—28 percent of total compensation paid.

The plaintiffs' net compensation as a percentage of the total expenditures was 52 percent for auto torts and 43 percent for all other torts. This difference primarily reflects the higher defendants' litigation costs for nonauto torts. All the components of auto and other tort litigation expenditures are shown graphically in Fig. 7.2.

GROWTH OF THE TORT SYSTEM

Although our study focused mainly on litigation costs and compensation paid on cases terminated in 1985, we also compiled some data on the rate of growth in the tort system. That rate varies among elements of the system. In terms of tort lawsuits filed, we estimate that the annual growth rate has averaged 3.9 percent since 1981—about 3.0 percent per capita.

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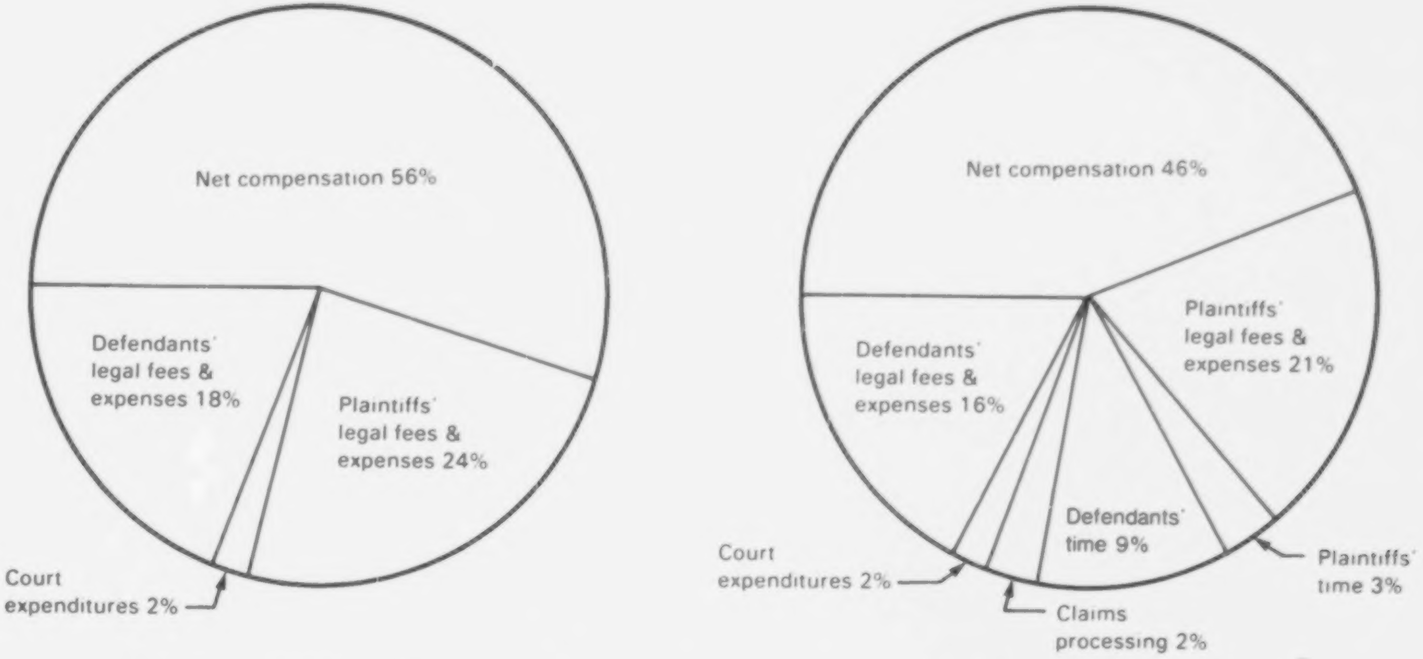
[5] The plaintiffs' net compensation as a percentage of the total expenditures was 47 percent using one method and 46 percent using the other.



Percentages of total expenditures
excluding value of litigants'
time and claims processing

Percentages of total expenditures
including value of litigants'
time and claims processing

NOTE: Totals may not sum to 100 due to rounding.

Fig. 7.1– Costs and compensation paid for the average tort lawsuit terminated in 1985 (average gross compensation paid = $24,000 to $29,000)

Table 7.4

AUTO AND OTHER TORTS: COSTS OF LITIGATION AND COMPENSATION PAID IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985

(In $ billion)

Type of Expenditure	All Torts	Auto Torts	Other Torts
Costs to plaintiffs	7.8	3.3	4.5
Costs to defendants	9.0	2.8	6.2
Court expenditures	0.5	0.2	0.3
Total costs of litigation	17.3	6.3	11.0
Net compensation paid	15.1	6.9	8.2
Total expenditures	32.4	13.2	19.2

NOTE: Dollars shown are the average of Estimates 1 and 2.

Table 7.5

AUTO TORTS: LITIGATION EXPENDITURES IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985

(In $ billion)

Type of Expenditure	Estimate 1, Primarily Based on Insurance Industry Data	Estimate 2, Primarily Based on Lawsuit Survey Data
Plaintiffs' costs		
Plaintiffs fees and expenses	2.5	3.8
Value of time and other expenses	0.1	0.3
Total costs to plaintiffs	2.6	4.1
Defendants' costs		
Legal fees and expenses	1.0	2.3
Claims-processing cost for lawsuits	0.4	0.4
Value of time and other expenses	0.4	1.1
Total costs to defendants	1.8	3.8
Court expenditures	0.2	0.2
Total legal fees, expenses, and court expenditures	3.7	6.3
Total value of litigants' time, claim processing, and other expenses	0.9	1.8
Total costs of litigation	4.6	8.1
Compensation paid		
Total	8.1	12.3
Total, less plaintiffs' legal fees and expenses	5.6	8.5
Total, less all costs to plaintiffs	5.5	8.2
Total expenditures		
Total, excluding value of litigants' time and claim processing	9.3	14.8
Total, all expenditures	10.1	16.3

NOTE: Totals may not sum exactly due to rounding.

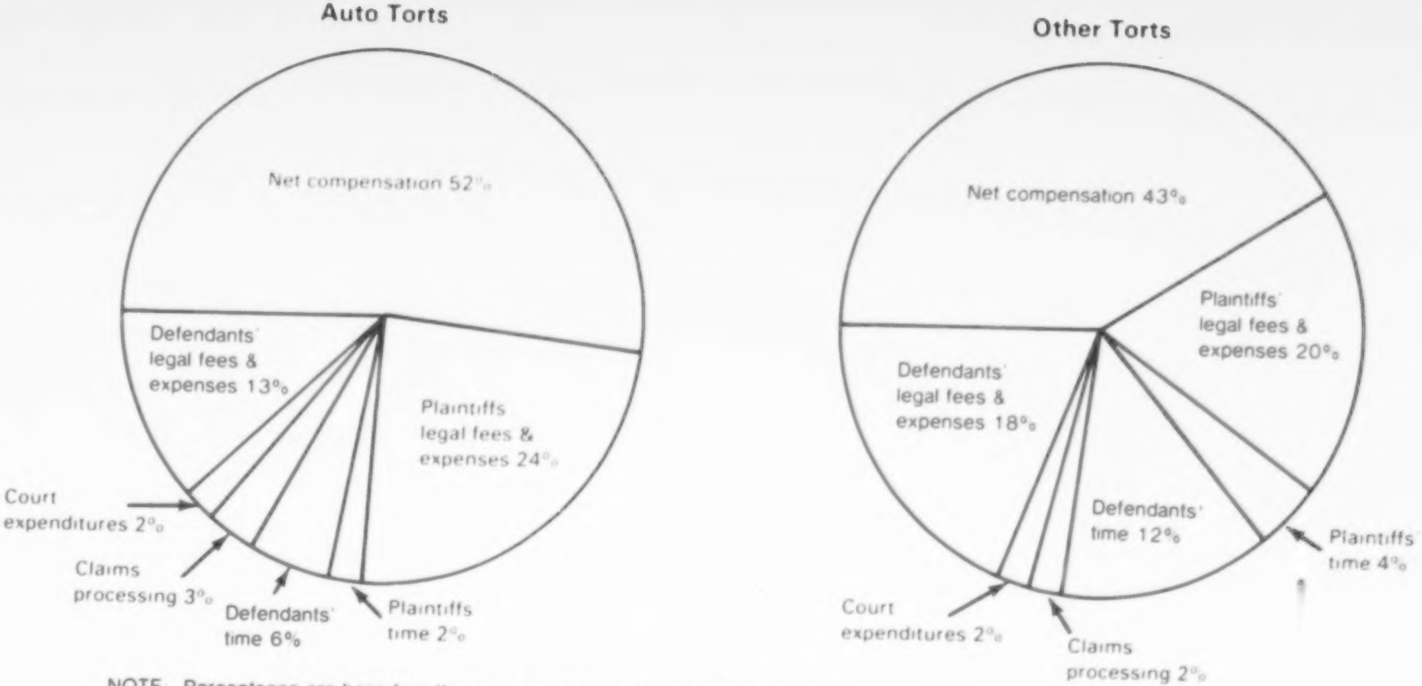
Table 7.6

OTHER TORTS: LITIGATION EXPENDITURES IN STATE AND FEDERAL COURTS OF GENERAL JURISDICTION IN 1985

(In $ billion)

Type of Expenditure	Estimate 1, Primarily Based on Insurance Industry Data	Estimate 2, Primarily Based on Lawsuit Survey Data
Plaintiffs' costs		
Plaintiffs fees and expenses	3.8	3.8
Value of time and other expenses	0.6	0.8
Total costs to plaintiffs	4.4	4.6
Defendants' costs		
Legal fees and expenses	3.7	3.4
Claims-processing cost for lawsuits	0.4	0.4
Value of time and other expenses	2.1	2.4
Total costs to defendants	6.2	6.2
Court expenditures	0.3	0.3
Total legal fees, expenses, and court expenditures	7.8	7.5
Total value of litigants' time, claim processing, and other expenses	3.1	3.6
Total costs of litigation	10.9	11.1
Compensation paid		
Total	12.6	12.8
Total, less plaintiffs' legal fees and expenses	8.8	9.0
Total, less all costs to plaintiffs	8.2	8.2
Total expenditures		
Total, excluding value of litigants' time and claim processing	16.6	16.5
Total, all expenditures	19.1	19.3

NOTE: Totals may not sum exactly due to rounding.



NOTE Percentages are based on the average of two estimates, and may not sum to 100 due to rounding

Fig. 7.2—Costs and compensation paid for the average auto and other tort lawsuit terminated in 1985

The growth rate in expenditures for the tort lawsuits has been higher. Although we do not have precise data on that rate, we can get a reasonable idea of it by looking at the growth rate in amounts paid per claim by insurers over the last five years. The following figures include both claims involving lawsuits and claims for which no lawsuits had been filed.[6]

The average annual growth rate in average compensation paid per liability claim over the past five years has been about 12 percent for auto claims and 17 percent for other tort claims—considerably higher than the 7 percent average growth in the Consumer Price Index during the same years. The average growth rate in insured defendants' average legal fees and expenses paid per liability claim over the past five years has been about 6 percent for auto and 15 percent for other tort claims. Thus, other nonauto tort expenditures per claim are growing faster than auto tort expenditures per claim.

OTHER RECENT STUDIES

Two recent studies address topics related to this RAND report. The Tillinghast study[7] estimated that $68 billion was spent on the U.S. tort system in 1984 and that "only 25 percent of tort costs go to victims to compensate economic loss." The $68 billion figure is higher than ours because it includes the cost of insurance premiums in 1985 that cover claims, lawsuits, and the operation of the insurance system. We only report on compensation and costs directly associated with tort lawsuits terminated in 1985. The 25 percent figure is a Tillinghast estimate of the compensation for economic loss, and is not the total compensation paid to plaintiffs in lawsuits.

The New York University study[8] estimated that the administrative costs of the tort system in 1984 were $9 to $27 billion. They suggest that the true number lies "somewhere in the middle of this range (i.e., between $15 and $20 billion)." This finding is nearly the same as our finding that the total transactions costs of the tort litigation system in 1985 were between $16 and $19 billion. Our estimated range is narrower primarily because we used three additional types of information: unpublished insurance industry data, 1984 tort filings (released by the

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[6] Of all insured liability compensation paid in 1985, we estimated 50 percent was paid for claims involving lawsuits.

[7] Robert W. Sturgis, *The Cost of the U.S. Tort System: An Address to the American Insurance Association*, Tillinghast, Nelson, and Warren, Inc., Simsbury, Connecticut, November 1985.

[8] Andrew Schotter and Janusz Ordover, *The Cost of the Tort System*, Starr Center for Applied Economics, New York University, March 1986.

National Center for State Courts in July 1986), and computer data tapes from the University of Wisconsin lawsuit survey.

SUMMARY

Plaintiffs with tort lawsuits terminated in 1985 in state and federal courts of general jurisdiction received approximately half of the $29 billion to $36 billion spent. The costs of litigation consumed the other half.

Appendix A

RAND ANALYSIS OF DATA FROM THE UNIVERSITY OF WISCONSIN CIVIL LITIGATION RESEARCH PROJECT[1]

INTRODUCTION

The University of Wisconsin study was the first large-scale empirical study of litigation expenditures. The resulting database is the best available source of detailed information on civil litigation in the late 1970s. The University of Wisconsin research team conducted several thorough analyses of the database, focusing primarily on lawyer-time spent and on the median characteristics of the litigants and lawyers interviewed. Their findings that are relevant to this RAND research study are summarized below.

RAND conducted additional analyses of this rich database. Our analyses supplement the University of Wisconsin analyses primarily in five areas, by presenting: (1) results for tort cases separately (both motor-vehicle-related torts and other torts); (2) results at the lawsuit level rather than only at the litigant or lawyer level; (3) averages rather than medians (since the average is the statistic needed to project nationwide totals); (4) detailed results on the value of time spent by litigants; and (5) projections of total national expenditures in 1985 dollars.

The University of Wisconsin survey was conducted in 12 court jurisdictions: five federal judicial districts and at least one state court of general jurisdiction in the same geographic area as each of the federal districts. They randomly sampled civil cases, with limitations on the number sampled for certain types of cases.

The University of Wisconsin survey excluded: collections cases in which no response from the defendant was found in the file and which resulted in a plaintiff's judgment; probate cases, unless the dispute was adversarial; bankruptcy cases; government vs. government lawsuits; cases involving judicial review of administrative decisions that did not involve a trial de novo; prisoner petitions; deportations; Title II cases; labor law cases if they arose out of grievance procedures covered by collective bargaining agreements, e.g., appeals from the decisions of arbitrators; and all domestic relations cases to the extent that they accounted for more than 20 percent of the sample in any given court.[2] None of these exclusions affected the sampling of tort cases.

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[1] William L. F. Felstiner and Herbert M. Kritzer, members of the Civil Litigation Research Project team, lent extensive and invaluable assistance to us by making this database available and helping us to interpret the information.

The study included 1,649 civil lawsuits sampled from court records in the state and federal courts in Eastern Wisconsin, Eastern Pennsylvania, Central California, South Carolina, and New Mexico. In each district the sampled cases terminated in 1978 in either the federal district court or a state court in the same geographic area. Half the cases in the study were federal cases, and approximately one-fifth of the cases came from each of the five geographic areas.

The five geographic areas in the Wisconsin study included two major metropolitan districts, two districts in smaller urban areas, and one in a predominantly rural district; each district was from a different region of the country. The project selected the jurisdictions to provide as much representativeness as possible.

Data from court records were collected by law students supervised by members of the University of Wisconsin project staff. For the 1649 court cases, they completed 1812 private lawyer interviews,[3] 257 individual litigant interviews, 461 private organization interviews, and 232 government interviews in 1981. These figures do not include interviews with litigants and lawyers involved in cases handled by some alternative dispute resolution process outside of the courts.

The Wisconsin researchers excluded certain lawyer respondents from their analysis of lawyer-time spent. They dropped 54 respondents because they lacked sufficient information on time spent, 153 others who were not paid on a fee-for-service basis, and 523 more who could not or did not supply a money value for stakes (since the researchers were most interested in analysis of data involving hours and stakes).[4] However, the Institute for Civil Justice analysis includes all lawyer respondents for whom we have both compensation paid and lawyer fee data.

The Wisconsin study excluded small claims cases (claims under $1000) and also excluded 37 federal cases that the researchers viewed as too complex to be handled within the scope of their research. (Some unknown number of the 37, perhaps 10 to 15, involved torts.) No large, complex state court cases were excluded. Thus, the Wisconsin data for state-court tort cases include all large cases and constitute a random sample intended to be representative of all tort cases with initial claims over $1000. Federal cases constitute only 5 percent of civil tort litigation in courts of general jurisdiction. The University of Wisconsin exclusions may bias the state average compensation upward slightly (because of excluding claims with an initial demand under $1000) and may bias the federal average compensation downward somewhat.

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[2] David M. Trubek et al., *Civil Litigation Research Project Final Report*: Vol. 1, *Studying the Civil Litigation Process: The CLRP Experience*, University of Wisconsin Law School, Madison, March 1983.

[3] The average income from practicing law for the three years preceding the 1980 interview for those lawyers interviewed was $53,000; the median was $45,000.

[4] David M. Trubek, Joel B. Grossman, William L. F. Felstiner, Herbert M. Kritzer, and Austin Sarat, *Civil Litigation Research Project Final Report*: Vol. 2, *Civil Litigation as the Investment of Lawyer Time*, University of Wisconsin Law School, Madison, March 1983, p. II-95.

RAND obtained both the original survey data and the data analysis files on computer tape from the University of Wisconsin so that we could conduct additional analyses specific to tort cases. We grouped the cases into four categories. "Auto tort" cases included all cases involving a tort and a motor vehicle. "Other tort" cases included medical malpractice, product liability, and all other types of torts, plus cases (other than motor vehicle cases) that involved multiple areas of law including torts. The third category (which was not included in this study) was contract and business cases,[5] and here we did not include contract cases that also involved the tort area of law. The last category (also not included in this study) consisted of all other types of cases such as domestic relations, real property, probate, and regulation.

The remainder of this appendix will concentrate on data for auto tort and other tort court cases only.

The picture that emerges is that the great majority of these cases settle, do not have extensive litigation activity, do not go to trial, and involve only a few thousand dollars in compensation.

AREA OF LAW

Half of the state court cases studied and 30 percent of the federal court cases involved the tort area of law. The sample comprised 362 auto tort cases and 292 other tort cases (see Table A.1).

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[5] The "contract" category includes cases identified by the University of Wisconsin as contracts, restitution, lending and credit transactions, insurance, and commercial law. It also includes business and corporation law categories such as mismanagement, organization ownership and control, corporate finance, shareholder claims, mergers and acquisitions, partnerships, bankruptcy, and other business and corporation law. It does not include real property cases or regulation cases such as those concerned with licensing, employment practices, discrimination, union rights, or workplace safety. It also does not include public law categories such as tax assessment and collection, immigration, civil commitment, environmental protection, nonbusiness discrimination, civil rights, and welfare benefits.

Table A.1

AREAS OF LAW OF 1649 COURT CASES FROM
UNIVERSITY OF WISCONSIN DATA

	State Cases		Federal Cases	
Area of Law	Number	Percent	Number	Percent
Auto tort	276	33	86	11
Other tort	139	17	153	19
Contract/business	210	25	257	32
All other	215	26	313	39
Total	840		809	

SOURCE: RAND analysis of University of Wisconsin data.

LIKELIHOOD OF LITIGATION OF A TORT DISPUTE

The Wisconsin study pointed out that: "Viewed against the baseline of potential lawsuits, litigation is not frequent, since for every dispute in the court records there are nine others that never even reached the filing stage." Tort disputes also usually do not result in litigation, although litigation is more likely for a tort dispute than the average other type of dispute.[6] The Wisconsin study found that 18.7 percent of the tort disputes, about one in five, resulted in litigation.[7]

TORT CASE TRIALS

According to court records, only a small percent of the cases involved a trial. The sample included 19 tort case trials in state court (where 5 percent of the torts cases went to trial), and 38 such trials in federal court (where 16 percent of the cases went to trial). See Table A.2.

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[6] David M. Trubek et al., "The Costs of Ordinary Litigation," *UCLA Law Review*, Vol. 31, No. 1, October 1983, p. 83.

[7] Ibid., p. 87.

Table A.2

PERCENT OF CASES WITH TRIALS

Type of Case	Number of Cases with Data	Number of Trials	Percent With Trial
	State Court		
Auto tort	276	9	3
Other tort	139	10	7
	Federal Court		
Auto tort	86	9	10
Other tort	153	29	19

SOURCE: RAND analysis of University of Wisconsin data.

TIME FROM FILING TO DISPOSITION FOR TORT CASES

In state courts, half of the tort cases were resolved in a year or less from the time of filing. The average was about 15.5 months. However, 10 percent of the auto tort cases took over three years to close.

In federal courts, the average time from filing to closure was 12.2 months, about three months shorter than in state courts. (See Table A.3.)

Table A.3

TIME FROM FILING TO DISPOSITION

Type of Case	Number of Cases with Data	Median Days	Average Days	90th Percentile Days
		State Court		
Auto tort	275	376	482	1111
Other tort	138	359	452	854
		Federal Court		
Auto tort	86	294	337	664
Other tort	153	329	391	851

SOURCE: RAND analysis of University of Wisconsin data.

NUMBER OF PLAINTIFFS AND DEFENDANTS

The average tort case filed in state court had 1.32 plaintiffs. The average in federal court was about the same, 1.27 plaintiffs. Approximately three-fourths of all the tort cases filed had only one plaintiff. (See Table A.4.) Note that multiple parties (such as members of the same household) who functioned as if they were one party in the lawsuit were counted as one in the Wisconsin data.

The average number of named defendants per tort case filed was slightly higher, 1.62 in state court and 1.70 in federal court. A little over half of all tort cases filed had only one defendant. (See Table A.5.)

NUMBER OF VARIOUS TYPES OF PARTIES PER CASE

These numbers are needed to convert the single-litigant and lawyer-interview data from the University of Wisconsin surveys to data for the entire lawsuit.

For auto tort cases, the plaintiffs were almost always individuals. In state courts, there were averages of 1.32 individual plaintiffs, 0.05 nongovernment organization plaintiffs, and 0.01 government plaintiffs. The comparable numbers in federal court were 1.25, 0.09, and 0.01.

Table A.4

TOTAL NUMBER OF PLAINTIFFS

Type of Case	Number of Cases with Data	Percent of Cases with One Plaintiff	Average Number of Plaintiffs
State Court			
Auto tort	276	70	1.39
Other tort	139	83	1.17
Federal Court			
Auto tort	86	70	1.35
Other tort	153	85	1.22

SOURCE: RAND analysis of University of Wisconsin data.

NOTE: Multiple plaintiffs who functioned as if they were one plaintiff, e.g., members of the same household, were counted as one plaintiff in the Wisconsin data.

Table A.5

TOTAL NUMBER OF DEFENDANTS

Type of Case	Number of Cases with Data	Percent of Cases with One Defendant	Average Number of Defendants
	State Court		
Auto tort	276	57	1.57
Other tort	139	55	1.73
	Federal Court		
Auto tort	86	60	1.58
Other tort	153	58	1.76

SOURCE: RAND analysis of University of Wisconsin data.

NOTE: Multiple defendants who functioned as if they were one defendant, e.g., members of the same household, were counted as one defendant in the Wisconsin data.

For auto tort cases, the named defendants usually were individuals. In state courts, there were averages of 1.12 named individual defendants, 0.43 named nongovernment organization defendants,[8] and 0.01 named government defendants. The comparable numbers in federal court were 1.05, 0.46, and 0.08.

For other (nonauto) tort cases, the plaintiffs usually were individuals, but the named defendants usually were organizations. In state courts, there were averages of 1.07 individual, 0.09 nongovernment organization, and 0.01 government plaintiffs, but 0.41 individual, 1.14 nongovernment organization, and 0.17 government named defendants. The comparable numbers in federal court were 1.00 individual, 0.20 nongovernment organization, and 0.01 government plaintiffs, but 0.35 individual, 1.23 nongovernmental organization, and 0.16 government named defendants. (See Tables A.6 through A.8.)

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[8] Note that for some cases filed in the state of Wisconsin in which the tortfeasor was an insured individual, the named defendants included the insurer instead of or in addition to the insured individuals. In those cases, the individual tortfeasor was not coded by the researchers as a defendant. (Interview with Herbert Kritzer, September 23, 1986. See also David M. Trubek et al., *Civil Litigation Research Project Final Report*: Vol. 1, *Studying the Civil Litigation Process: The CLRP Experience*, University of Wisconsin Law School, Madison, March 1983, p. I-67.) Thus, for a small percentage of the cases in the study (less than 10 percent), the coded named defendant was the insuring organization instead of the individual. This does not affect our estimates of total compensation and legal fees paid per case by all defendants combined, but it does make the distinction of individuals versus organizations less precise.

Table A.6

INDIVIDUALS AS PARTIES IN LAWSUITS[a]

Type of Case	Number of Cases With Data	Percent of Cases Involving Individuals	Average Number of Individual Parties	Average Number of Individual Parties per Case[b]
		Plaintiffs		
State Court				
Auto tort	276	96	1.38	1.32
Other tort	139	93	1.16	1.07
Federal Court				
Auto tort	86	97	1.29	1.25
Other tort	153	36	1.17	1.00
		Defendants		
State Court				
Auto tort	276	90	1.25	1.12
Other tort	139	33	1.24	0.41
Federal Court				
Auto tort	86	83	1.27	1.05
Other tort	153	26	1.33	0.35

SOURCE: RAND analysis of University of Wisconsin data.

[a] Multiple individuals who functioned as if they were one, e.g., members of the same household, were counted as one in the Wisconsin data.

[b] Fraction of cases involving an individual times average number of individual parties on cases that involved individuals.

CONFIGURATION OF PARTIES

We classified disputes into three categories: individual vs. individual,[9] individual vs. organization, and organization vs. organization. We included the government within the organization category if the government was a litigant. Only a small percentage of the tort cases filed have an organizational plaintiff suing an individual defendant or another organization. Over half of the auto tort cases involve only named individual parties, and approximately another third of the auto tort cases involve an individual plaintiff suing organization defendants. About three-fourths of the other tort cases involve an individual plaintiff suing organization defendants. (See Table A.9.)

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[9] Since individuals named as defendants often were insured, unnamed insurance companies often were involved with the lawsuit on behalf of the named individual defendant.

Table A.7

ORGANIZATIONS (EXCEPT GOVERNMENT) AS PARTIES IN LAWSUITS

Type of Case	Number of Cases With Data	Percent of Cases Involving Organizations	Average Number of Organization Parties	Average Number of Organization Parties per Case[a]
		Plaintiffs		
State Court				
Auto tort	276	5	1.00	0.05
Other tort	139	8	1.09	0.09
Federal Court				
Auto tort	86	8	1.14	0.09
Other tort	153	17	1.19	0.20
		Defendants		
State Court				
Auto tort	276	36	1.20	0.43
Other tort	139	73	1.56	1.14
Federal Court				
Auto tort	86	36	1.29	0.46
Other tort	153	80	1.54	1.23

SOURCE: RAND analysis of University of Wisconsin data.

[a] Fraction of cases involving an organization times average number of organizations on cases involving organizations.

NUMBER OF LAWYERS/LAW FIRMS

The average tort case filed in state court had 1.34 plaintiffs' attorneys or law firms, approximately the same as the average of 1.32 plaintiffs per case. Note that multiple attorneys from the same law firm were counted as one. The average in federal court was 1.46, slightly larger than the average of 1.27 plaintiffs per case. Approximately three-fourths of all tort cases filed had only one plaintiff's attorney. (See Table A.10.)

The average number of defendants' lawyers per tort case filed was slightly higher than the number of plaintiffs' attorneys: 1.67 in state court and 1.79 in federal court. The number of defense attorneys was approximately the same as the number of defendants, and thus a little over half of all tort cases filed had only one defendant's attorney. (See Table A.11.)

Table A.8

GOVERNMENT ORGANIZATIONS AS PARTIES IN LAWSUITS[a]

Type of Case	Number of Cases With Data	Percent of Cases Involving Government	Average Number of Government Parties	Avervage Number of Government Parties Per Case[b]
		Plaintiffs		
State Court				
Auto tort	276	1	1.0	0.01
Other tort	139	1	1.0	0.01
Federal Court				
Auto tort	86	1	1.0	0.01
Other tort	153	1	1.0	0.01
		Defendants		
State Court				
Auto tort	276	1	1.33	0.01
Other tort	139	14	1.15	0.17
Federal Court				
Auto tort	86	7	1.20	.08
Other tort	153	13	1.25	.16

SOURCE: RAND analysis of University of Wisconsin data.

[a] Includes all levels of government.

[b] Fraction of cases involving government times average number of government parties on cases that involved government.

Table A.9

CONFIGURATION OF PARTIES

Type of Case	Number of Cases with Data	Percent with Only Named Individual Parties	Percent with Individual Plaintiff Versus Organization Defendant	Percent with Plaintiff Versus Named Individual Defendant	Percent with Organization Parties on Both Sides
			State Court		
Auto tort	276	58	36	5	1
Other tort	139	14	78	3	6
			Federal Court		
Auto tort	86	55	36	3	6
Other tort	153	10	72	0	18

SOURCE: RAND analysis of University of Wisconsin data.

Table A.10

NUMBER OF PLAINTIFFS' ATTORNEYS PER CASE

Type of Case	Number of Cases with Data	Percent of Cases with One Attorney	Average Number of Attorneys
	State Court		
Auto tort	276	70	1.42
Other tort	139	79	1.19
	Federal Court		
Auto tort	86	60	1.56
Other tort	153	73	1.40

SOURCE: RAND analysis of University of Wisconsin data.

NOTE: Multiple attorneys from the same law firm were counted as one.

Table A.11

NUMBER OF DEFENSE ATTORNEYS PER CASE

Type of Case	Number of Cases with Data	Percent of Cases with One Attorney	Average Number of Attorneys
	State Court		
Auto tort	276	54	1.61
Other tort	139	54	1.79
	Federal Court		
Auto tort	86	57	1.71
Other tort	153	58	1.84

SOURCE: RAND analysis of University of Wisconsin data.

NOTE: Multiple attorneys from the same law firm were counted as one.

COMPENSATION PER LITIGANT

Before calculating the compensation paid per case in 1985 dollars, we had to calculate the compensation paid per tort litigant in 1978 dollars from the University of Wisconsin lawyer interview data.

Individual plaintiffs received an average of $9467 in auto tort and $6114 in other tort cases in state court.[10] Plaintiffs who received nothing are included in these averages. The corresponding averages in federal court were substantially higher: $42,380 and $36,248, respectively. As shown in Table A.12, the median compensation was approximately half as large as the average. Half of the individual litigants in state court received $4000 or less.

Organization plaintiffs received less than individual plaintiffs: an average of $2987 in state court and $12,729 in federal court (see Table A.13).

Named individual defendants or their insurers paid an average of $4987 in state court and $19,388 in federal court, significantly less than individual plaintiffs received (see Table A.14).

Table A.12

COMPENSATION PAID PER LITIGANT:
INDIVIDUAL PLAINTIFFS
(In 1978 dollars)

Type of Case	Number of Litigants with Data	Median	Average	90th Percentile
		State Court		
Auto tort	130	4,000	9,467	24,900
Other tort	67	3,750	6,114	15,000
		Federal Court		
Auto tort	47	22,500	42,380	136,000
Other tort	58	10,000	36,248	151,000

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

NOTE: Zero compensation litigants are included. The monetary amount paid in cases that had a nonmonetary component to their outcome also is included.

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[10] In the few cases where compensation was paid over a period of time, the present value of those "periodic" payments was included.

Table A.13

COMPENSATION PAID PER LITIGANT: ORGANIZATION PLAINTIFFS
(In 1978 dollars)

Type of Case	Number of Litigants with Data	Average
	State Court	
All torts	8	2,987
	Federal Court	
All torts	14	12,729

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

NOTE: Zero compensation litigants are included. The monetary amount paid in cases that had a nonmonetary component to their outcome also is included.

Table A.14

COMPENSATION PAID PER LITIGANT: NAMED INDIVIDUAL DEFENDANTS
(In 1978 dollars)

Type of Case	Number of Litigants with Data	Median	Average	90th Percentile
		State Court		
Auto tort	44	3,650	5,632	14,500
Other tort	(a)	(a)	(a)	(a)
All torts	52		4,987	
		Federal Court		
Auto tort	27	6,000	9,876	25,000
Other tort	(a)	(a)	(a)	(a)
All torts	30		19,388	

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

NOTE: Zero compensation litigants are included. The monetary amount paid in cases that had a nonmonetary component to their outcome also is included. Payments by insurers on behalf of named individual defendants are included.

[a] Fewer than ten interviews.

On the other hand, named organization defendants paid more if they were defendants than they received as plaintiffs. The average paid was $10,291 for an auto tort and $4966 for an other tort litigant in state court. The comparable averages paid in federal court were $47,402 for an auto tort and $29,831 for an other tort litigant (see Table A.15).

Table A.16 presents data on the percent of all tort compensation paid in various categories of compensation for the different types of litigants.

NONMONETARY COMPONENT IN CASE OUTCOME

As shown in Tables A.17 and A.18, most tort litigation ends with only a monetary outcome. Only 2 to 14 percent has a nonmonetary component, depending on the type of court, case, and litigant. A nonmonetary outcome might be an agreement that the litigant will do something, or stop doing something, such as harassing the plaintiff.

Table A.15

COMPENSATION PAID PER LITIGANT:
ORGANIZATION DEFENDANTS
(In 1978 dollars)

Type of Case	Number of Litigants with Data	Median	Average	90th Percentile
State Court				
Auto tort	30	4,644	10,291	38,999
Other tort	47	2,422	4,966	16,500
Federal Court				
Auto tort	18	5,650	47,402	240,000
Other tort	55	9,000	29,831	84,768

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

NOTE: Zero compensation litigants are included. The monetary amount paid in cases that had a nonmonetary component to their outcome also is included.

Table A.16

PERCENTAGES OF ALL TORT COMPENSATION IN VARIOUS CATEGORIES
(Percentages of litigants in parentheses)

Type of Litigant	$0 to 1,000	$1,000–5,000	$5,000–10,000	$10,000–20,000	$20,000–50,000	$50,000–100,000	$100,000 and Up	All Levels
State Court								
Plaintiff—	1	17	13	23	28	12	6	100
individual	(11)	(50)	(15)	(14)	(8)	(2)	(1)	(101)
Defendant	1	21	28	30	21	0	0	101
Individual	(19)	(44)	(21)	(12)	(4)	(0)	(0)	(100)
Organization	1	10	22	25	30	12	0	100
	(27)	(31)	(21)	(13)	(7)	(1)	(0)	(100)
Federal Court								
Plaintiff—	0	1	3	4	20	9	63	100
individual	(10)	(16)	(16)	(12)	(27)	(5)	(14)	(100)
Defendant	0	4	5	17	22	0	52	100
Individual	(13)	(30)	(13)	(23)	(17)	(0)	(3)	(99)
Organization	0	2	3	5	11	12	66	99
	(15)	(21)	(18)	(14)	(15)	(7)	(11)	(101)

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

NOTE: Data are not presented for organization plaintiffs because of an insufficient number of interviews.

COMPENSATION PER CASE

The data on compensation paid or received per litigant can be multiplied by the number of litigants of each type per case to make an estimate of the compensation per case. We did this separately for plaintiffs and defendants in Tables A.19 and A.20. As expected when dealing with sample survey data, there is some difference between estimates made from different sets of interviews from defendants and plaintiffs. However, the numbers should be and are reasonably consistent. To obtain the best possible estimate, we combined the plaintiffs' and defendants' data in Table A.21 to make an estimate using all available data.

In terms of compensation per case in 1978 dollars, the average auto tort case in state court had an estimated $12,024 in compensation in 1978, while the average other tort case had an estimated $7,593. The

Table A.17

NONMONETARY OUTCOME: INDIVIDUAL LITIGANT

Type of Case	Number of Litigants with Data		Percent of Litigants with Nonmonetary Component to Case Outcome	
	Defendant	Plaintiff	Defendant	Plaintiff
		State Court		
Auto tort	42	127	2	6
Other tort	(a)	57	(a)	14
		Federal Court		
Auto tort	27	46	4	2
Other tort	(a)	51	(a)	8

SOURCE: RAND analysis of University of Wisconsin data, using interviews for which both compensation and legal fees are known.

[a] Fewer than ten interviews.

Table A.18

NONMONETARY OUTCOME: ORGANIZATION LITIGANT

Type of Case	Number of Litigants with Data		Percent of Litigants with Nonmonetary Component to Case Outcome	
	Defendant	Plaintiff	Defendant	Plaintiff
		State Court		
Auto tort	28	(a)	4	(a)
Other tort	41	(a)	12	(a)
		Federal Court		
Auto tort	17	(a)	12	(a)
Other tort	47	(a)	6	(a)

SOURCE: RAND analysis of University of Wisconsin data, using interviews for which both compensation and legal fees are known.

[a] Fewer than ten interviews.

Table A.19

AVERAGE COMPENSATION RECEIVED PER CASE BY PLAINTIFFS
(In 1978 dollars)

Type of Case	Number of Plaintiffs	Average Compensation per Plaintiff	Total per Case
State Court			
Auto tort			
Individual plaintiff	1.32	9,467	12,496
Organization or government plaintiff	0.06	2,987	179
All plaintiffs	1.38	9,185	12,675
Other tort			
Individual plaintiff	1.07	6,114	6,542
Organization or government plaintiff	0.10	2,987	299
All plaintiffs	1.17	5,847	6,841
Federal Court			
Auto tort			
Individual plaintiff	1.25	42,380	52,975
Organization or government plaintiff	0.10	12,729	1,273
All plaintiffs	1.35	40,184	54,248
Other tort			
Individual plaintiff	1.00	36,248	36,248
Organization or government plaintiff	0.21	12,729	2,673
All plaintiff	1.21	32,166	38,921

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

Table A.20

AVERAGE COMPENSATION PAID PER CASE BY DEFENDANTS
(In 1978 dollars)

Type of Case	Number of Defendants	Average Compensation per Defendant	Total per Case
State Court			
Auto tort			
Individual defendant	1.12	5,632	6,308
Organization or government defendants	0.44	10,291	4,528
All defendants	1.56	6,946	10,836
Other tort			
Individual defendant	0.41	4,987	2,044
Organization or government defendants	1.31	4,966	6,505
All defendants	1.72	4,970	8,549
Federal Court			
Auto tort			
Individual defendant	1.05	9,876	10,370
Organization or government defendants	0.54	47,402	25,597
All defendants	1.59	22,621	35,967
Other tort			
Individual defendant	0.35	19,388	6,792
Organization or government defendants	1.39	29,831	41,465
All defendants	1.74	27,734	48,257

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

Table A.21

AVERAGE COMPENSATION PER CASE
(In 1978 dollars)

Type of Case	Number of Cases with Data		Average Compensation per Case		
	Defendant	Plaintiff	Defendant Data	Plaintiff Data	Overall Data[a]
			State Court		
Auto tort	74	135	10,836	12,675	12,024
Other tort	55	70	8,549	6,841	7,593
			Federal Court		
Auto tort	45	53	35,967	54,248	45,854
Other tort	58	66	48,257	38,921	43,288[b]

SOURCE: RAND analysis of University of Wisconsin data.

[a] Average of defendant and plaintiff data weighted by number of lawyer interviews.

[b] Not including an estimated 11 federal cases that were excluded from the University of Wisconsin study because of their complexity.

comparable averages for auto tort and other tort cases were substantially higher in federal court: $45,854 and $43,288, respectively.

LAWYER FEE ARRANGEMENT

Plaintiffs in tort cases nearly always pay their lawyers on a contingency fee basis, whereby the lawyer gets a percentage of the compensation, usually after other legal expenses are deducted. Depending on the court and type of tort case, only 2 to 6 percent of individual plaintiffs paid their lawyer on an hourly basis, and 1 to 2 percent paid on some other basis (such as a flat fee). Organization plaintiffs also usually pay their lawyers on a contingency fee basis, but are more likely to pay on an hourly fee basis (12 to 15 percent). Perhaps contingency fee arrangements were prevalent for organization plaintiffs because organizations include many small "mom and pop" businesses and professionals incorporated in practice. (See Tables A.22 and A.23 for details.)

Table A.22

FEE ARRANGEMENT: INDIVIDUAL PLAINTIFFS

Type of Case	Number of Litigants with Data	Percent with Fee Arrangement		
		Hourly Fee	Contingent Fee	Other Fee
State Court				
Auto tort	102	2	97	1
Other tort	51	6	92	2
Federal Court				
Auto tort	38	3	97	0
Other tort	50	2	98	0

SOURCE: RAND analysis of University of Wisconsin data, using interviews for which both compensation and legal fees are known.

Table A.23

FEE ARRANGEMENT: ORGANIZATION PLAINTIFFS

Type of Case	Number of Litigants with Data	Percent with Fee Arrangement		
		Hourly Fee	Contingent Fee	Other Fee
State Court				
All torts	8	12	88	0
Federal Court				
All torts	13	15	85	0

SOURCE: RAND analysis of University of Wisconsin data, using interviews for which both compensation and legal fees are known.

Defendants in tort cases almost always pay their lawyers on an hourly fee basis. Not one paid on a contingency basis, but up to 8 percent (depending on the court and type of case) paid on a flat fee or some other basis. (See Tables A.24 and A.25.)

Table A.24

FEE ARRANGEMENT: INDIVIDUAL DEFENDANTS

Type of Case	Number of Litigants with Data	Percent with Fee Arrangement		
		Hourly Fee	Contingent Fee	Other Fee
State Court				
Auto tort	25	92	0	8
Other tort	(a)	(a)	(a)	(a)
Federal Court				
Auto tort	15	93	0	7
Other tort	(a)	(a)	(a)	(a)

SOURCE: RAND analysis of University of Wisconsin data, using interviews for which both compensation and legal fees are known.

[a] Fewer than ten interviews.

Table A.25

FEE ARRANGEMENT: ORGANIZATION DEFENDANTS

Type of Case	Number of Litigants with Data	Percent with Fee Arrangement		
		Hourly Fee	Contingent Fee	Other Fee
State Court				
Auto tort	22	95	0	5
Other tort	37	97	0	3
Federal Court				
Auto tort	10	100	0	0
Other tort	40	95	0	5

SOURCE: RAND analysis of University of Wisconsin data, using interviews for which both compensation and legal fees are known.

TYPES OF ACTIVITY BY LAWYERS

The University of Wisconsin study found that the typical litigation did not involve extensive pretrial activity; there was no evidence of any discovery activity in over half of the court files. Instead, the researchers found that even in federal courts discovery is used intensively in only a small fraction of civil cases.[11]

The study also found that "a typical case involves relatively few lawyer hours and that attorneys spend almost half of this time in conferences with clients, factual investigation other than discovery, and settlement negotiation."[12] (See Table A.26.)

LAWYER HOURS PER LITIGANT

The average amount of lawyer time spent on behalf of an individual plaintiff varied from one to three full-time-equivalent work weeks, depending on the type of case and whether it was filed in state or federal court. Auto tort cases required an average of 40 plaintiff's lawyer hours in state court and 121 in federal court; all other tort cases combined required 71 hours in state and 96 hours in federal court. The median case required less than half as much time as the average case, underscoring the fact that the majority of the cases filed by individual plaintiffs are not highly complex and do not require a great deal of lawyer effort. (See Tables A.27 and A.28 for details for individual and organization plaintiffs.)

Lawyers for organization defendants also did not spend a great deal of time on the average litigant's case. The average was 29 hours for both auto tort and for other tort organization litigants in state court. As with plaintiffs, the lawyer effort was higher in federal court. The average was 83 hours per organization litigant for an auto tort and 71 hours for an other tort case in federal court. (See Tables A.29 and A.30.)

LAWYER HOURS PER CASE

Lawyer hours are higher per case than per litigant because there is an average of more than one plaintiff and defendant per case.

The average auto case filed in state court required 101 hours of lawyer effort, 46 by the defendant's side and 55 by the plaintiff's side.

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[11] David M. Trubek et al., "The Costs of Ordinary Litigation," *UCLA Law Review*, Vol. 31, No. 1, October 1983, p. 90.

[12] Ibid.

Table A.26

PERCENTAGE OF LAWYER HOURS DEVOTED TO VARIOUS ACTIVITIES

Type of Activity	Lawyer Fee Type	All Tort Cases
Conferring	Hourly	15.6%
	Contingent	16.7
Discovery	Hourly	25.0
	Contingent	18.6
Fact investigation	Hourly	11.3
	Contingent	15.2
Settlement discussion	Hourly	13.5
	Contingent	15.1
Pleading	Hourly	12.7
	Contingent	12.1
Legal research	Hourly	7.2
	Contingent	7.3
Trial and hearing	Hourly	9.0
	Contingent	8.4
Appeal and enforcement	Hourly	.4
	Contingent	.2
Other	Hourly	5.4
	Contingent	6.3
All activities	Hourly	100.1
	Contingent	99.0

SOURCE: David M. Trubek, Joel B. Grossman, William L. F. Felstiner, Herbert M. Kritzer, and Austin Sarat, *Civil Litigation Research Project Final Report*: Vol. 2, *Civil Litigation as the Investment of Lawyer Time*, University of Wisconsin Law School, Madison, March 1983, p. II-85.

Table A.27

LAWYER HOURS PER LITIGANT: INDIVIDUAL PLAINTIFFS

Type of Case	Number of Litigants with Data	Median	Average	90th Percentile
		State Court		
Auto tort	113	20	40	92
Other tort	62	22	71	100
		Federal Court		
Auto tort	42	56	121	285
Other tort	49	40	96	250

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

Table A.28

LAWYER HOURS PER LITIGANT: ORGANIZATION PLAINTIFFS

Excludes Lawyers Who Are Litigants' Employees

Type of Case	Number of Litigants with Data	Average
	State Court	
All torts	8	37
	Federal Court	
All torts	10	387

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

Table A.29

LAWYER HOURS PER LITIGANT: INDIVIDUAL DEFENDANTS

Type of Case	Number of Litigants with Data	Median	Average	90th Percentile
State Court				
Auto tort	42	20	30	54
Other tort	(a)	(a)	(a)	(a)
All torts	50		27	
Federal Court				
Auto tort	27	29	32	59
Other tort	(a)	(a)	(a)	(a)
All torts	30		51	

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

[a]Fewer than ten interviews.

Table A.30

LAWYER HOURS PER LITIGANT: ORGANIZATION DEFENDANTS

Excludes Lawyers Who Are Defendants' Employees

Type of Case	Number of Litigants with Data	Median	Average	90th Percentile
State Court				
Auto tort	30	23	29	57
Other tort	47	21	27	58
Federal Court				
Auto tort	18	40	83	345
Other tort	54	54	71	153

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

The average other tort case filed in state court required slightly more lawyer effort: 126 hours by both sides combined, 46 by the defendant's side and 80 by the plaintiff's side. While the average lawyer's time for plaintiffs is higher than for defendants, the median times are similar for both sides in state courts: 20 to 23 hours per litigant on either side.

Federal court cases required more lawyer effort: an average of 268 hours by both sides combined for an auto tort case and 294 hours for all other tort cases combined. As in state court, the plaintiffs' lawyers spent more time on average than the defendants' lawyers (see Table A.31 for details).

The University of Wisconsin researchers investigated to see whether hourly fee lawyers devoted more effort to cases in federal court than in state court—and did find an "extra effort gap" even after accounting for the effects of such variables as stakes and case complexity. They concluded that "the federal-state difference reflects a combination of court norms and lawyers' desires to perform well in the 'big time' world of federal court."[13]

LEGAL FEES AND EXPENSES PER LITIGANT

To calculate the total legal fees and expenses per tort case filed, we first analyzed the University of Wisconsin interview data on legal fees and expenses per litigant. We then combined the fees and expenses

Table A.31

AVERAGE LAWYER HOURS PER CASE

Type of Case	Number of Litigants with Data		Average Lawyer hours per Case	
	Defendant	Plaintiff	Defendant	Plaintiff
	State Court			
Auto Tort	72	118	46	55
Other tort	55	65	46	80
	Federal Court			
Auto tort	45	46	78	190
Other tort	57	55	117	177

SOURCE: RAND analysis of University of Wisconsin data. The average hours per case were estimated by multiplying the average number of each type of litigant per case and the average lawyer hours spent on behalf of that type of litigant.

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[13] H. M. Kritzer et al., "Courts and Litigation Investment: Why Do Lawyers Spend More Time on Federal Cases?" *The Justice System Journal*, Vol. 9, No. 1, 1984, p. 7.

per litigant with the average number of litigants per case to estimate the fees and expenses per case.

The legal fees and expenses paid per litigant consist of: (1) legal bills from lawyers hired as counsel for a particular lawsuit; (2) salaries, benefits, expenses, and overhead of lawyers who are employees of the litigant (usually an organization); and (3) the salaries, benefits, expenses, and overhead of government lawyers when the government is a litigant. Tables A.32 through A.37 provide detailed information on each of these three types of lawyers as a function of the type of litigant, type of case, the side the litigant is on, and whether the case is in state or federal court.

For lawyers retained by an individual plaintiff, the average bill for legal fees and expenses was $2,928 in 1978 for an auto tort case filed in state court. Other tort cases were slightly less expensive to pursue, $1,748. Legal fees and expenses in federal court were substantially higher than they were in state court: $13,934 for an auto tort case and $11,270 for another tort case. The median legal fees and expenses paid by an individual plaintiff were generally less than half as large as the average.

Individual defendants paid less on average than individual plaintiffs. In state court in 1978, the average individual defendant (and his or her insurer) paid $1,676 in legal fees and expenses for all tort cases combined and $2,957 in federal court.

Organization defendants paid approximately the same as individual defendants in state court: $1,485 for an auto tort case and $1,419 for an other tort defense, but significantly more than individual defendants in federal court ($5,366 for an auto tort defense and $4,370 for an other tort defense on average).

In addition to or instead of hiring outside counsel, organization defendants sometimes use a lawyer who is an employee of the organization. This person may be the organization's general counsel who monitors and manages outside counsel, or may perform all of the legal work without the assistance of outside counsel. Since most litigation is handled by outside counsel, most organizations spend no money on in-house lawyers. The average amount spent on in-house lawyers (including the zero amounts) was less than $200 for a tort case in state court, $286 for an auto tort case in federal court, and an average of $1,129 for an other tort case in federal court.

Note that the fringe benefits and overhead costs associated with the time spent by lawyers who are employees of the defendant organization have been included. On a nationwide basis, fringe benefits constituted

Table A.32

LEGAL FEES AND EXPENSES PAID PER LITIGANT: INDIVIDUAL PLAINTIFFS

(In 1978 dollars)

Type of Case	Number of Litigants with Data	Median	Average	90th Percentile
		State Court		
Auto tort	130	1,395	2,928	7,630
Other tort	67	1,033	1,748	4,033
		Federal Court		
Auto tort	47	4,502	13,934	45,609
Other tort	58	3,472	11,270	41,235

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

Table A.33

LEGAL FEES AND EXPENSES PAID PER LITIGANT: NAMED INDIVIDUAL DEFENDANTS

(In 1978 dollars)

Type of Case	Number of Litigants with Data	Median	Average	90th Percentile
		State Court		
Auto tort	44	960	1872	3049
Other tort	(a)	(a)	(a)	(a)
All torts	52		1676	
		Federal Court		
Auto tort	27	1447	1656	3050
Other tort	(a)	(a)	(a)	(a)
All torts	30		2957	

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

NOTE: If the defendant was insured, these legal fees and expenses usually were paid by the insurer rather than the named individual defendant.

[a] Fewer than ten interviews.

Table A.34

LEGAL FEES AND EXPENSES PAID PER LITIGANT: ORGANIZATION PLAINTIFFS

Excludes Lawyers Who Are Litigants' Employees

(In 1978 dollars)

Type of Case	Number of Litigants with Data	Average
	State Court	
All torts	8	991
	Federal Court	
All torts	14	4,186

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

Table A.35

LEGAL FEES AND EXPENSES PAID PER LITIGANT: ORGANIZATION DEFENDANTS

Excludes Lawyers Who Are Litigants' Employees

(In 1978 dollars)

Type of Case	Number of Litigants with Data	Median	Average	90th Percentile
		State Court		
Auto tort	30	1,125	1,485	3,498
Other tort	47	1,044	1,419	3,120
		Federal Court		
Auto tort	18	2,084	5,366	21,430
Other tort	55	3,433	4,370	8,320

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

Table A.36

IN-HOUSE LAWYER COSTS PER CASE TO AN ORGANIZATION

(Other than government)
(In 1978 dollars)

Type of Case	Number of Litigants with Data		Median Cost		Average Cost	
	Defendant	Plaintiff	Defendant	Plaintiff	Defendant	Plaintiff
State Court						
Auto tort	49	(a)	0	(a)	195	(a)
Other tort	36	(a)	0	(a)	173	(a)
Federal Court						
Auto tort	21	(a)	0	(a)	286	(a)
Other tort	44	(a)	0	(a)	1129	(a)

SOURCE: RAND analysis of University of Wisconsin data from organization litigant interviews.

[a] Fewer than five litigants.

Table A.37

COST OF GOVERNMENT LAWYER TIME AND OTHER LITIGATION COSTS FOR TORT CASES

(In 1978 dollars)

Type of Case	Number of Litigants with Data		Average	
	Defendant	Plaintiff	Defendant	Plaintiff
State Court				
All torts	5	5	3,717	387
Federal Court				
All torts	11	3	4,863	600

SOURCE: RAND analysis of University of Wisconsin data. The other litigation costs include litigation expenses but exclude the cost of nonlawyer government personnel time. Because of the limited number of government interviews in the University of Wisconsin data, auto torts and other torts were grouped together in this table.

18.8 percent of salary in 1980.[14] Overhead as a percentage of salary varies from organization to organization. Since we had salaries but did not have overhead from the University of Wisconsin data, we estimated that overhead items, such as facilities, supplies, and support personnel, were 87 percent of salary.[15]

For litigation involving government, lawyers representing the government are usually government employees. To obtain the total cost to the government, we took the salary costs reported by the University of Wisconsin survey and added 35 percent for fringe benefits plus 82 percent for overhead such as facilities, utilities, administration, and secretaries.[16] The figures shown for government lawyer time and other litigation costs do not include the cost of nonlawyer government personnel time. (See Secs. IV and V for such costs.)

The cost of a government lawyer was $387 when the government was a plaintiff in state court and $600 when the government was a plaintiff in federal court in a tort case. Defending the government required considerably more time and effort, and hence the defense cost was $3,717 in state court in 1978 and $4,863 in federal court for the average tort case.

LEGAL FEES AND EXPENSES PER CASE

The average number of litigants for each type of case, multiplied by the average legal fees and expenses paid per litigant of each type, yields an estimate of the average legal fees and expenses per case closed in 1978 dollars. See Tables A.38 and A.39 for data on plaintiffs and defendants.

The average auto tort case and average other tort case filed in state court had plaintiffs' legal fees and expenses of $3,919 and $1,963, respectively. Taking an average of the figures for auto tort and other

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[14] Y. P. Chen, "The Growth of Fringe Benefits: Implications for Social Security," *Monthly Labor Review*, Vol. 104, No. 11, November 1984, pp. 3-10.

[15] The overhead associated with the portion of the defendant organization in which in-house lawyers work is not known, but we will estimate it to be the same as the overhead for law firms. The actual figure may or may not be lower than it is for law firms. The average overhead per lawyer from a recent survey of law firms was $62,088, while the average lawyer income including fringe benefits was $85,143. Assuming the national average fringe benefit rate of 18.8 percent, the average law firm overhead was an estimated 87 percent of lawyer income excluding fringe benefits. See Altman and Weil, Inc., *The 1985 Survey of Law Firm Economics*, Ardmore, Pennsylvania, 1985.

[16] RAND Corporation interview with Richard Clark, Torts Branch, Civil Division, U.S. Department of Justice, January 10, 1986. In the absence of accurate information on overhead rates associated with state and municipal lawyers, the federal fringe benefit and overhead rates were utilized.

Table A.38

AVERAGE LEGAL FEES AND EXPENSES PAID PER CASE BY PLAINTIFFS
(In 1978 dollars)

Type of Case	Number of Plaintiffs	Average per Plaintiff	Total per Case
State Court			
Auto tort			
Individual plaintiff	1.32	2,928	3,865
Organization plaintiff	0.05	991	50
Government plaintiff	0.01	387[a]	4
All plaintiffs	1.38	2,840	3,919
Other tort			
Individual plaintiff	1.07	1,748	1,870
Organization plaintiff	0.09	991	89
Government plaintiff	0.01	387[a]	4
All plaintiffs	1.17	1,678	1,963
Federal Court			
Auto tort			
Individual plaintiff	1.25	13,934	17,418
Organization plaintiff	0.09	4,186	377
Government plaintiff	0.01	600[a]	6
All plaintiffs	1.35	13,186	17,801
Other tort			
Individual plaintiff	1.00	11,270	11,270
Organization plaintiff	0.20	4,186	837
Government plaintiff	0.01	600[a]	6
All plaintiffs	1.21	10,011	12,113

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

[a] Includes value of government lawyer time.

Table A.39

AVERAGE LEGAL FEES AND EXPENSES PAID PER CASE BY DEFENDANTS
(In 1978 dollars)

Type of Case	Number of Defendants	Average per Defendant	Total per Case
State Court			
Auto tort			
Individual defendant	1.12	1,872	2,097
Organization defendant	0.43	1,680[a]	722
Government defendant	0.01	3,717[a]	37
All defendants	1.56	1,831	2,856
Other tort			
Individual defendant	0.41	1,676	687
Organization defendant	1.14	1,592[a]	1,815
Government defendant	0.17	3,717[a]	632
All defendants	1.72	1,822	3,134
Federal Court			
Auto tort			
Individual defendant	1.05	1,656	1,739
Organization defendant	0.46	5,652[a]	2,600
Government defendant	0.08	4,863[a]	389
All defendants	1.59	2,973	4,728
Other tort			
Individual defendant	0.35	2,957	1,035
Organization defendant	1.23	5,499[a]	6,763
Government defendant	0.16	4,863[a]	778
All defendants	1.74	4,929	8,576

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

[a] Includes value of in-house organization or government lawyer time, if one was employed for the case.

tort cases, using the percentage of each type in total tort filings, we estimate that in 1978 plaintiffs in the average of all tort cases in state court paid legal fees and expenses of $3,039.[17]

Legal fees and expenses were substantially higher in federal court: an average of $17,801 for an auto tort case and $12,113 for an other tort case. The average of all tort cases terminated in federal court involved legal fees and expenses of $13,023 in 1978.[18]

On the defense side, the average auto tort case terminated in state court cost $2,856 in 1978 for legal fees and expenses. The comparable figure was $3,134 for an other tort case in state court. Again, as with plaintiffs, defendants have higher legal fees and expenses in federal court: an average of $4,728 for an auto tort case and $8,576 for an other tort case. The defendants in the average of all tort cases paid $2,981 in state court, which is almost identical to the average of $3,039 that plaintiffs paid in state court. In federal court, the defendants on the average case paid an average of $7,960, which is more than double the cost in state court.

Of the total cost of legal fees plus expenses, the great majority is for legal fees. Expenses such as filing fees, travel, experts, etc., accounted for 10 percent or less of the total legal fees and expenses paid by individual plaintiffs. Consider a hypothetical example: If the individual plaintiff paid 36 percent in legal fees and expenses, then approximately 3 percent out of that 36 percent would have been for expenses. Details for various types of litigants are shown in Tables A.40 through A.43.

Defendants generally have a slightly higher proportion of expenses in their total legal bill. Individual defendants pay 15 to 16 percent of their total legal bill in state court for expenses and 9 to 20 percent in federal court.

AVERAGE LEGAL FEES AND EXPENSES AS A PERCENT OF COMPENSATION

Plaintiffs in state court had average legal fees and expenses that were 30 percent of average compensation in 1978. The total is slightly higher for auto tort than for other tort cases in state court—31 percent and 29 percent, respectively. In federal court, average legal fees and expenses were 33 percent of compensation in auto tort cases and 31 percent of compensation in other tort cases. These cases almost

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[17] As shown in Sec. II, 55 percent of tort filings in state courts of general jurisdiction involve a motor vehicle.

[18] As shown in Sec. II, 16 percent of the federal tort case filings involve a motor vehicle.

Table A.40

LEGAL EXPENSES PAID PER LITIGANT: INDIVIDUAL PLAINTIFFS
(In 1978 dollars)

Type of Case	Number of Litigants with Data	Median Expenses	Average Expenses	90th Percentile Expenses	Average Expenses as a Percent of Legal Fees Plus Expenses
State Court					
Auto tort	122	100	199	391	7
Other tort	66	100	177	354	10
Federal Court					
Auto tort	45	203	1086	4273	8
Other tort	54	300	1124	2389	10

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

Table A.41

LEGAL EXPENSES PAID PER LITIGANT:
ORGANIZATION PLAINTIFFS
(In 1978 dollars)

Type of Case	Number of Litigants with Data	Average Expenses	Average Expenses as a Percent of Legal Fees Plus Expenses
State Court			
All torts	(a)	(a)	(a)
Federal Court			
All torts	13	743	18

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

[a] Fewer than 10 interviews.

Table A.42

LEGAL EXPENSES PAID PER LITIGANT: INDIVIDUAL DEFENDANTS
(In 1978 dollars)

Type of Case	Number of Litigants with Data	Median Expenses	Average Expenses	90th Percentile Expenses	Average Expenses as a Percent of Legal Fees Plus Expenses
			State Court		
Auto tort	42	60	295	667	16
Other tort	(a)	(a)	(a)	(a)	
All torts	49		254		15
			Federal Court		
Auto tort	24	105	151	353	9
Other tort	(a)	(a)	(a)	(a)	
All torts	27		581		20

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

[a] Fewer than ten interviews.

Table A.43

LEGAL EXPENSES PAID PER LITIGANT: ORGANIZATION DEFENDANTS
(In 1978 dollars)

Type of Case	Number of Litigants with Data	Median Expenses	Average Expenses	90th Percentile Expenses	Average Expenses as a Percent of Legal Fees Plus Expenses
			State		
Auto tort	29	47	77	204	5
Other tort	41	40	144	490	10
			Federal Court		
Auto tort	17	212	784	2760	15
Other tort	53	275	599	2000	14

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

always are handled on a contingency fee basis, and we note that in many of these cases the ratio of legal fees and expenses to compensation was less than one-third.

On the defense side, all defendants combined in state court paid average legal fees and expenses that were 26 percent of compensation in auto tort cases and 37 percent of compensation in other tort cases. For all types of tort cases combined in state courts, the ratio was about 31 percent, which is approximately the same percentage that the average plaintiff paid his or her attorney in state court. In federal court, legal fees and expenses for defendants averaged 13 percent of compensation in auto tort cases and 18 percent of compensation in other tort cases. These percentages are lower than in state court primarily because compensation paid is substantially higher in federal than in state court. Although average legal fees and compensation are both higher in federal court than in state court, hourly legal fees do not increase proportionally to compensation for defendants, and hence the ratio of legal fees and expenses to compensation is lower for the higher average compensation cases in federal court.

The ratios of legal fees and expenses to compensation for all tort cases are shown in Tables A.44 and A.45.

In the main text of the report, these figures are updated to 1985 dollars, and the value of time spent by litigants on these cases is estimated and included to obtain a total cost to the litigants.

LEGAL FEES AND EXPENSES FOR VARIOUS LEVELS OF COMPENSATION

Plaintiffs' legal fees and expenses as a percentage of compensation average about one-third for various levels of compensation, as is to be expected since plaintiffs in tort cases usually pay their lawyers on a contingency fee basis. Cases worth less than $1,000 are the exception, however. In those relatively small cases, the average legal fees plus expenses charged to the plaintiff are greater than the average compensation the plaintiff receives. This is because, unlike plaintiffs' fees, plaintiffs' expenses are not a predetermined percentage of compensation.

Defendants' legal fees and expenses as a percentage of compensation go down as compensation goes up. This happens because defendants in tort cases usually pay their lawyers on an hourly basis, and the number of lawyer hours does not rise in proportion to compensation. As shown in Table A.46, cases worth less than $1,000 in compensation have average defendant legal fees and expenses that are greater than

Table A.44

RATIO OF AVERAGE LEGAL FEES AND EXPENSES TO AVERAGE COMPENSATION RECEIVED PER CASE BY PLAINTIFFS
(In 1978 dollars)

Type of Case	Ratio per Litigant	Ratio per Case
State Court		
Auto tort		
Individual plaintiff	.31	—
Organization plaintiff	.33	—
All plaintiffs	—	.31
Other tort		
Individual plaintiff	.29	—
Organization plaintiff	.33	—
All plaintiffs	—	.29
Federal Court		
Auto tort		
Individual plaintiff	.33	—
Organization plaintiff	.33	—
All plaintiffs	—	.33
Other tort		
Individual plaintiff	.31	—
Organization plaintiff	.33	—
All plaintiffs	—	.31

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

Table A.45

RATIO OF AVERAGE LEGAL FEES AND EXPENSES TO AVERAGE COMPENSATION PAID PER CASE BY DEFENDANTS
(In 1978 dollars)

Type of Case	Ratio per Litigant	Ratio per Case
State Court		
Auto tort		
Individual defendant	.33	—
Organization defendant	.16	—
All defendants	—	.26
Other tort		
Individual defendant	.34	—
Organization defendant	.32	—
All defendants	—	.37
Federal Court		
Auto tort		
Individual defendant	.17	—
Organization defendant	.12	—
All defendants	—	.13
Other tort		
Individual defendant	.15	—
Organization defendant	.18	—
All defendants	—	.18

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

compensation. However, the large compensation cases have defendants' legal fees and expenses that are well below the one-third that the plaintiffs often pay.

Thus, for tort cases with small compensation, defendants' legal fees and expenses exceed those of the plaintiffs. For tort cases with large compensation, the plaintiffs pay more than the defendants in legal fees and expenses. The crossover point where both litigants on both sides of the tort case pay about the same legal fees and expenses is approximately $6,000 in state court and $12,000 in federal court (in 1978 dollars). The crossover point is higher in federal court because defense lawyers spend more time on cases in federal court than in state court.

Table A.46

AVERAGE LEGAL FEES AND EXPENSES FOR VARIOUS LEVELS OF COMPENSATION FOR ALL TORT CASES

Type of Litigant	$0 to 1,000	$1,000–5,000	$5,000–10,000	$10,000–20,000	$20,000–50,000	$50,000–100,000	$100,000 and up
				State Court			
Plaintiff—individual	1.13	.34	.25	.30	.32	(a)	(a)
Organization	(a)	(a)	(a)	(a)	(a)	(a)	(a)
Defendant—individual	9.54	.43	.17	.14	(a)	(a)	(a)
Organization	4.09	.42	.25	.14	.07	(a)	(a)
				Federal Court			
Plaintiff—individual	1.52	.35	.34	.35	.34	.25	.32
Organization	(a)	(a)	(a)	(a)	(a)	(a)	(a)
Defendant—individual	7.27	.61	.29	.12	.08	(a)	(a)
Organization	7.54	.97	.83	.24	.23	.16	.03

SOURCE: RAND analysis of University of Wisconsin data, using lawyer interviews for which both compensation and legal fees are known.

[a] Fewer than five interviews.

VALUE OF LITIGANTS' TIME AND EXPENSES OTHER THAN LEGAL FEES AND EXPENSES

In addition to what litigants and their insurers pay for legal fees and related expenses, individual litigants spend time on the case, as do employees (other than in-house lawyers) of organization litigants. In this section, we estimate the value of that time and miscellaneous expenses other than legal fees and expenses.

Individual Litigants

The data include the value of time spent talking with lawyers, experts, witnesses, and court personnel, and others outside the household, and includes time spent collecting needed information and reading papers. About one-third of the time was spent "talking with someone else such as a relative outside the immediate household, a friend, a co-worker, a member of a labor union, or a religious advisor."

Total personal time costs and expenses to an individual as a litigant (other than lawyer's fees and expenses) are shown in Table A.47. In calculating the value of the time individual litigants spent on the case, we made two estimates. The higher of the two valued the litigant's time at the hourly rate of pay of the highest wage earner in the household. The lower of the two estimates valued litigants' time at the minimum wage (an average of $3.00 an hour during the time period of concern).

The average individual plaintiff's personal time costs and expenses other than legal fees and expenses, weighted by the number of auto and other tort cases in state and federal court, was $492 (low estimate) to $608 (high estimate) in 1978 dollars. Included in these totals are $329 in expenses other than legal fees and expenses billed through outside counsel.

The average named individual defendant's personal time costs and expenses other than legal fees and expenses was $709 (low estimate) to $1,038 (high estimate) in state court in 1978 dollars. Included in these totals are $161 in expenses other than legal fees and expenses billed through outside counsel. These data on the time costs and other expenses for individual defendants are the best information available on the subject but are of limited quality for the following reasons: (1) Only nine interviews of named individual defendants in state court were conducted and included in these data, because the insurance company was interviewed instead if the named individual defendant was

Table A.47

TOTAL PERSONAL TIME COSTS AND EXPENSES TO AN INDIVIDUAL AS A LITIGANT

(Other than lawyer's fees and expenses)
(In 1978 dollars)

Type of Case	Number of Litigants with Data		Estimated Average Cost			
			Defendants		Plaintiffs	
	Defendants	Plaintiffs	Low[a]	High[b]	Low[a]	High[b]
		State Court				
Auto tort						
Time cost	—	32	—	—	67	182
Expenses					90	90
Other tort						
Time cost	—	23	—	—	289	402
Expenses					611	611
All torts[c]						
Time cost	9		548	877	—	—
Expenses			161	161	—	—
		Federal Court				
All torts[c]						
Time cost	(d)	29	(d)	(d)	85	233
Expenses			(d)	(d)	422	422

SOURCE: RAND analysis of University of Wisconsin data from interviews with individual litigants.

NOTE: The hours spent by the individual as a litigant include time spent on the following activities: talking with or writing to a lawyer about the problem; talking with an expert on some aspect of the case; talking with a witness; talking with or writing to a government office, agency or official, including court officers; talking with or writing to a private organization; talking with someone else such as a relative outside the immediate household, a friend, a co-worker, a member of a labor union, or a religious advisor; and searching files, looking at official documents, examining evidence, or reading books or reports.

[a] The low estimate values the individual litigant's time spent on the case at the minimum wage (an average of $3.00 per hour during time cases were open).

[b] The high estimate values the individual litigant's time at the hourly rate of pay of the highest wage earner in the household.

[c] Because of the limited number of individual litigant interviews in the University of Wisconsin data, auto torts and other torts were grouped together in this table.

[d] Fewer than five litigants.

insured;[19] and (2) uninsured individual defendants may differ from all individual defendants if they spend more time on the case than the average of all individual defendants (thus leading to a slight overestimate for all individual and organizational defendants combined). Note that in the analysis in this report, we never use data from insurer interviews to represent the value of time spent by named individual defendants.

Organization Litigants

Table A.48 shows total time costs and expenses for organization defendant nonlawyer personnel. The total cost other than legal fees and expenses, weighted by the number of auto and other tort cases in state and federal court, was $2,243 in 1980 dollars.[20] Of that total, $507 was for expenses other than legal fees and expenses.

The fringe benefits and overhead associated with the time spent on litigation by employees of an organization were added to wages to get the total cost to the organization. On a nationwide basis, fringe benefits were 18.8 percent of salary in 1980.[21] Overhead as a percentage of salary varies from organization to organization. Since we did not have an exact number from the University of Wisconsin data, we estimated that overhead items such as facilities, supplies, support personnel, etc., were 87 percent of salary.[22]

These data on the personnel time costs and other expenses for organization defendants are the best information available on the subject but are of limited quality for the following reason: An unknown number of interviews with insurance companies for individual defendants are included in the University of Wisconsin data on interviews with organization defendants. This inclusion of some insurer

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[19] Insurance company interview data are not included in Table A.47.

[20] The interviews were conducted in late 1980, and the organizations were asked for the salary information at that time; interviewees were not asked for salary information in the year of case closure.

[21] Y. P. Chen, "The Growth of Fringe Benefits: Implications for Social Security," *Monthly Labor Review*, Vol. 104, No. 11, November 1984, pp. 3–10.

[22] The employees of organizations who spend time on litigation are usually in white collar staff and management positions. The actual overhead associated with that portion of an organization is not known, but we estimate it to be approximately that of a law firm. The actual but unknown overhead rate associated with white collar staff and management personnel who deal with litigation may or may not be lower than it is for law firms. For comparison, note that the government overhead rate is 82 percent. The average overhead per lawyer found by a recent survey of law firms was $62,088, while the average lawyer income including fringe benefits was $85,143. Assuming the national average fringe benefit rate of 18.8 percent, the average overhead was an estimated 87 percent of lawyer income excluding fringe benefits. See Altman and Weil, Inc., *The 1985 Survey of Law Firm Economics*, Ardmore, Pennsylvania, 1985.

Table A.48

TOTAL IN-HOUSE NONLAWYER PERSONNEL TIME COSTS AND EXPENSES TO AN ORGANIZATION

(Other than government)[a]

Type of Case	Number of Litigants with Data		Median Cost		Average Cost	
	Defendant	Plaintiff	Defendant	Plaintiff	Defendant	Plaintiff
			State Court			
Auto tort	49	(b)				
Nonlawyer personnel			580	(b)	1,265	(b)
Expenses[c]			150	(b)	253	(b)
Other tort	36	(b)				
Nonlawyer personnel			583	(b)	2,106	(b)
Expenses[c]			100	(b)	799	(b)
			Federal Court			
Auto tort	21	(b)				
Nonlawyer personnel			1,412	(b)	2,380	(b)
Expenses[c]			220	(b)	827	(b)
Other tort	44	(b)				
Nonlawyer personnel			1,027	(b)	3,905	(b)
Expenses[c]			200	(b)	652	(b)

SOURCE: RAND analysis of University of Wisconsin data from organization litigant interviews.

[a] Value of nonlawyer personnel in 1980 dollars; expenses in 1978 dollars.

[b] Fewer than five litigants.

[c] Excluding legal fees and related expenses.

interviews may bias the estimate of the average time costs and other expenses of organizations upward or downward to some unknown but probably small degree.

Total government nonlawyer personnel time costs and expenses are shown in Table A.49. The total cost weighted by the number of cases in state and federal court averaged $384 if the government was a plaintiff and $3,472 if the government was a defendant (in 1980 dollars).[23]

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[23] The interviews were conducted in late 1980, and the government interviewees were asked for the salary information at that time; interviewees were not asked for salary information in the year of case closure.

To obtain the total cost to the government, we took the salary costs reported by the University of Wisconsin survey and added 35 percent for fringe benefits plus 82 percent for overhead such as facilities, utilities, administration, and secretaries.[24]

Value of Litigants' Time and Expenses Per Case (Other than Legal Fees and Expenses)

The data on the value of time and expenses per litigant can be multiplied by the number of litigants of each type per case to make an estimate of the value of litigants' time and expenses per case.

We used data from Tables A.47 through A.49, weighted by the number of auto and other tort cases in state and federal court (from Sec. II of this report), and then adjusted to 1985 dollars to make the estimates in Tables A.50 and A.51.[25]

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[24] RAND Corporation interview with Richard Clark, Torts Branch, Civil Division, U.S. Department of Justice, January 10, 1986.

[25] In making those estimates, data from Tables A.47 to A.49 were adjusted to 1985 dollars using the following factors: The minimum wage used in the low estimate was $3.35 in 1985, up from an average of $3.00 when these suits were active (U.S. Bureau of the Census, *Statistical Abstract of the United States: 1986*, Washington, D.C., 1985). Expenses were adjusted using the Consumer Price Index (U.S. Bureau of Labor Statistics, *Monthly Labor Review*, Washington, D.C., monthly). Employee compensation was adjusted using percent change in compensation per employee-hour in the nonfarm business sector through 1980 and using the employment cost index thereafter (all civilian workers for individuals and civilian white collar workers for organization employees). (U.S. Bureau of the Census, *Statistical Abstract of the United States: 1986*, Washington, D.C., 1985.)

Table A.49

COST OF NONLAWYER GOVERNMENT PERSONNEL TIME FOR TORT CASES
(In 1980 dollars)

Type of Case	Number of Litigants with Data		Average	
	Defendant	Plaintiff	Defendant	Plaintiff
		State Court		
All torts	5	5	3,431	371
		Federal Court		
All torts	11	3	4,312	650

SOURCE: RAND analysis of University of Wisconsin data. Because of the limited number of government interviews in the University of Wisconsin data, auto torts and other torts were grouped together in this table.

Table A.50

VALUE OF PLAINTIFFS' TIME AND EXPENSES PER CASE OTHER THAN LEGAL FEES AND EXPENSES

(In 1985 dollars)

Type of Case and Plaintiff	Number of Plaintiffs	Average per Plaintiff Low Estimate	Average per Plaintiff High Estimate	Total per Case Low Estimate	Total per Case High Estimate
		State Court			
Auto tort					
Individual	1.32	224	451	296	595
Organization	0.05	1,250	1,250[a,b]	63	63
Government	0.01	499	499[a]	5	5
All plaintiffs	1.38	264	480	364	663
Other tort					
Individual	1.07	1,330	1,675	1,423	1,792
Organization	0.09	2,573	2,573[a,b]	232	232
Government	0.01	499	499[a]	5	5
All plaintiffs	1.17	1,419	1,734	1,660	2,029
		Federal Court			
Auto tort					
Individual	1.25	791	1,083	989	1,354
Organization	0.09	3,378	3,378[a,b]	304	304
Government	0.01	874	874[a]	9	9
All plaintiffs	1.35	964	1,235	1,302	1,667
Other tort					
Individual	1.00	791	1,083	791	1,083
Organization	0.20	4,809	4,809[a,b]	961	961
Government	0.01	874	874[a]	9	9
All plaintiffs	1.21	1,455	1,697	1,761	2,053

SOURCE: RAND analysis of University of Wisconsin data updated to 1985 dollars.

[a] Excludes value of in-house organization or government lawyer time, if one was employed for the case.

[b] Estimated assuming the ratio of organization defendant to organization plaintiff litigant time and expenses is the same as the comparable ratio for fees and expenses (see Secs. IV and V).

Table A.51

VALUE OF DEFENDANTS' TIME AND EXPENSES PER CASE OTHER THAN LEGAL FEES AND EXPENSES

(In 1985 dollars)

Type of Case and Defendant	Number of Defendants	Average per Defendant Low Estimate	Average per Defendant High Estimate	Total per Case Low Estimate	Total per Case High Estimate
		State Court			
Auto tort					
Individual	1.12	878	1,721	983	1,927
Organization	0.43	2,119	2,119[a]	911	911
Government	0.01	4,615	4,615[a]	46	46
All defendants	1.56	1,244	1,848	1,940	2,884
Other tort					
Individual	0.41	878	1,721	360	706
Organization	1.14	4,151	4,151[a]	4,732	4,732
Government	0.17	4,615	4,615[a]	785	785
All defendants	1.72	3,417	3,618	5,877	6,223
		Federal Court			
Auto tort					
Individual	1.05	878	1,721	922	1,807
Organization	0.46	4,565	4,565[a]	2,100	2,100
Government	0.08	5,800	5,800[a]	464	464
All defendants	1.59	2,192	2,749	3,486	4,371
Other tort					
Individual	0.35	878	1,721	307	602
Organization	1.23	6,327	6,327[a]	7,782	7,782
Government	0.16	5,800	5,800[a]	928	928
All defendants	1.74	5,182	5,352	9,017	9,312

SOURCE: RAND analysis of University of Wisconsin data updated to 1985 dollars.

[a] Excludes value of in-house organization or government lawyer time, if one was employed for the case.

Appendix B

STATE AND FEDERAL COURT CASE FILING DATA

This appendix contains a series of tables providing details of court case filing data, based on reports of the National Center for State Courts and the Administrative Office of the U.S. Courts.

Table B.1

GENERAL AND LIMITED JURISDICTION COURT CIVIL FILINGS, 1981

State	General Jurisdiction Filings	Limited Jurisdiction Filings	Percent of Total Filings That Are General Jurisdiction Filings
Alaska	11,445	13,588	45.7%
Arizona	89,537	56,852	61.2%
California	563,784	1,083,282	34.2%
Colorado	97,802	80,222	54.9%
Connecticut	179,487	48,787	78.6%
Delaware	6,658	43,070	13.4%
D.C.	148,118	0	100.0%
Florida	293,572	260,935	52.9%
Hawaii	22,640	16,907	57.2%
Idaho	52,556	0	100.0%
Illinois	671,410	0	100.0%
Iowa	158,755	0	100.0%
Kansas	119,511	0	100.0%
Kentucky	71,024	118,990	37.4%
Massachusetts	479,421	0	100.0%
Missouri	229,336	0	100.0%
Nebraska	32,928	56,644	36.8%
New Hampshire	16,805	55,084	23.4%
N. Carolina	81,803	344,483	19.2%
N. Dakota	12,571	13,300	48.6%
Ohio	264,283	391,297	40.3%
S. Carolina	38,465	143,791	21.1%
S. Dakota	36,321	0	100.0%
Utah	33,529	60,935	35.5%
Vermont	21,333	4,339	83.1%
Virginia	80,252	690,441	10.4%
Washington	116,000	100,635	53.5%
W. Virginia	49,852	57,105	46.6%
Wisconsin	323,920	0	100.0%
Totals for 29 States Reporting	4,303,118	3,640,687	54.2%

SOURCE: *State Court Caseload Statistics: Annual Report*, National Center for State Courts, Williamsburg, Virginia, 1981, pp. 50–57, 75.

Table B.2

TORT FILINGS AS A PERCENTAGE OF ALL GENERAL JURISDICTION COURT FILINGS, ALL REPORTING STATES, 1975-1981, 1984

	1975			1976			1977		
State	Tort Filings	Total Civil Filing	Percent Tort Filings	Tort Filings	Total Civil Filings	Percent Tort Filings	Tort Filings	Total Civil Filings	Percent Tort Filings
Alaska	—	—	—	870	10,749	8.1	910	11,375	8.0
Arizona	6,873	63,599	10.8	—	—	—	—	—	—
California	75,239	467,092	16.1	80,341	501,775	16.0	85,604	548,933	15.6
Colorado	3,873	84,801	4.6	3,250	82,035	4.0	3,329	92,238	3.6
Delaware	—	—	—	—	—	—	382	6,428	5.9
Florida	24,879	254,148	9.8	26,096	243,129	10.7	23,612	250,080	9.4
Hawaii	1,320	16,714	7.9	1,298	18,057	7.2	1,069	20,850	5.1
Idaho	1,125	37,224	3.0	1,484	40,245	3.7	1,608	45,537	3.5
Kansas	2,595	35,312	7.3	2,793	37,811	7.4	2,661	58,005	4.6
Maine	—	—	—	—	—	—	1,830	7,568	24.2
Maryland	8,411	57,330	14.7	8,196	62,158	13.2	7,724	66,026	11.7
Michigan	—	—	—	—	—	—	—	—	—
Montana	—	—	—	—	—	—	—	—	—
N. Dakota	—	—	—	840	7,630	11.0	773	9,006	8.6
Ohio	19,777	249,822	7.9	19,424	244,569	7.9	21,357	249,589	8.6
Oklahoma	7,251	157,853	4.6	7,622	160,562	4.7	6,899	172,406	4.0
Tennessee	11,800	80,724	14.6	12,163	83,202	14.6	11,262	86,347	13.0
Texas	—	—	—	—	—	—	—	—	—
Utah	797	26,029	3.1	809	25,533	3.2	751	27,010	2.8
Washington	6,746	90,663	7.4	6,749	94,325	7.2	7,321	99,000	7.4
Wisconsin	—	—	—	8,281	208,280	4.0	—	—	—
Total	170,684	1,621,311	10.5	180,216	1,820,060	9.9	177,092	1,750,398	10.1

Table B.2—continued

State	1978			1979			1980		
	Tort Filings	Total Civil Filings	Percent Tort Filings	Tort Filings	Total Civil Filings	Percent Tort Filings	Tort Filings	Total Civil Filings	Percent Tort Filings
Alaska	921	11,370	8.1	860	11,066	7.8	774	10,433	7.4
Arizona	—	—	—	—	—	—	—	—	—
California	86,729	563,355	15.4	92,948	579,754	16.0	83,127	548,442	15.2
Colorado	3,481	90,309	3.9	3,837	95,982	4.0	4,480	105,387	4.3
Delaware	—	—	—	—	—	—	—	—	—
Florida	21,761	262,355	8.3	20,366	259,345	7.9	21,127	275,194	7.7
Hawaii	1,155	22,669	5.1	1,324	22,903	5.8	1,396	24,766	5.6
Idaho	1,728	48,172	3.6	1,691	52,762	3.2	1,783	53,223	3.4
Kansas	3,249	92,076	3.5	5,027	104,013	4.8	5,438	117,037	4.6
Maine	1,803	8,023	22.5	2,118	7,760	27.3	2,072	8,595	24.1
Maryland	7,902	74,720	10.6	7,801	81,064	9.6	8,979	86,295	10.4
Michigan	—	—	—	15,256	189,320	8.1	18,483	203,924	9.1
Montana	—	—	—	1,725	26,372	6.5	1,557	27,272	5.7
N. Dakota	732	9,975	7.3	720	11,070	6.5	773	11,955	6.5
Ohio	21,587	254,758	8.5	21,412	256,661	8.3	21,398	262,785	8.1
Oklahoma	7,062	181,020	3.9	7,814	185,136	4.2	8,000	198,849	4.0
Tennessee	10,457	85,909	12.2	10,645	89,894	11.8	11,170	93,497	11.9
Texas	—	—	—	—	—	—	28,510	333,854	8.5
Utah	872	28,542	3.1	864	27,511	3.1	740	30,636	2.4
Washington	6,882	103,946	6.6	6,968	112,320	6.2	7,141	117,946	6.1
Wisconsin	18,584	188,406	9.9	—	—	—	—	—	—
Total	194,905	2,025,605	9.6	201,376	2,112,933	9.5	226,948	2,510,090	9.0

Table B.2—continued

State	1981 Total Tort Filings	1981 Percent Civil Filings	1981 Tort Filings	1984 Total Tort Filings	1984 Percent Civil Filings	1984 Tort Filing
Alaska	886	11,445	7.7	1,305	16,630	7.8
Arizona	—	—	—	9,173	85,355	10.7
California	80,970	563,784	14.4	97,068	598,330	16.2
Colorado	5,089	95,481	5.3	4,199	88,618	4.7
Delaware	—	—	—	—	—	—
Florida	21,063	293,572	7.2	26,815	383,516	7.0
Hawaii	1,468	22,640	6.5	1,611	25,916	6.2
Idaho	1,744	52,556	3.3	1,729	59,117	2.9
Kansas	4,517	119,511	3.8	4,033	117,888	3.4
Maine	1,914	8,072	23.7	2,083	6,775	30.7
Maryland	8,135	75,336	10.8	10,826	97,674	11.1
Michigan	—	—	—	23,186	150,242	15.4
Montana	1,465	28,989	5.1	1,519	26,346	5.8
N. Dakota	516	12,571	4.1	550	13,734	4.0
Ohio	21,906	264,283	8.3	22,149	290,980	7.6
Oklahoma	—	—	—	—	—	—
Tennessee	12,046	94,631	12.7	11,775	101,543	11.6
Texas	28,698	347,502	8.3	34,224	443,159	7.7
Utah	775	33,529	2.3	1,433	29,760	4.8
Washington	7,919	116,000	6.8	8,997	113,150	8.0
Wisconsin	—	—	—	—	—	
Total	119,111	2,139,902	9.3	262,675	2,648,733	9.9

SOURCE: National Center for State Courts, *State Court Caseload Statistics: Annual Report*, Williamsburg, Virginia.

NOTE: Dashed entries indicate that complete filing data were not available for the state for that year.

Table B.3

BREAKDOWN OF TORT FILINGS BY TYPE, ALL REPORTING STATES, GENERAL JURISDICTION COURTS, 1980 AND 1984

State	Auto Tort Filings	Auto Tort %	Medical Malpractice Filings	Medical Malpractice %	Products Liability Filings	Products Liability %	Total Tort Filings
			1980				
California	53,636	64.5		NA		NA	83,127
Colorado	1,836	41.0		NA		NA	4,480
Florida		NA	342	1.6		NA	21,127
Hawaii	772	55.3		NA		NA	1,396
Kansas	1,396	25.7	166	3.1	126	2.3	5,438
Maryland	6,358	70.8		NA		NA	8,979
Michigan	12,379	67.0		NA	481	2.6	18,483
Oklahoma	4,238	53.0		NA		NA	8,000
Texas	15,155	53.2		NA		NA	28,510
Total	95,770	60.5	508	1.9	607	2.5	179,540
Number of states reporting	8		2		2		9
			1984				
Arizona	5,853	63.8	361	3.9		NA	9,173
California	55,474	57.1		NA		NA	97,068
Hawaii	841	52.2		NA		NA	1,611
Maryland	7,710	71.2		NA		NA	10,826
Michigan	9,245	39.9		NA		NA	23,186
North Dakota		NA	44	8.0		NA	550
Texas	17,113	50.0		NA		NA	34,224
Total	96,236	54.7	405	4.2	NA	NA	176,638
Number of states reporting	6		2		0		7

SOURCE: 1980 data from *State Court Caseload Statistics: Annual Report*, 1980, Part II, National Center for State Courts, Williamsburg, Virginia; 1984 data from unpublished State Summary Tables provided by the National Center for State Courts.

NOTE: Total averages are for those states reporting specific tort types.

NA - not available.

Table B.4

U.S. DISTRICT COURT CIVIL CASES COMMENCED BY NATURE OF SUIT DURING THE TWELVE-MONTH PERIODS ENDING JUNE 30, 1975 THROUGH 1985

	1975		1976		1977		1978	
Federal Tort Action	Filings	%	Filings	%	Filings	%	Filings	%
Fed. Employer Liab. Act	1,243	4.7	1,329	5.1	1,306	4.9	1,494	5.6
Airplane	782	3.0	820	3.1	626	2.4	738	2.7
Marine	5,364	20.4	5,030	19.1	4,907	18.5	4,704	17.5
Motor vehicle	6,356	24.2	5,683	21.6	5,664	21.4	5,489	20.5
P.I. product liability	2,393	9.1	3,016	11.5	3,366	12.7	3,600	13.4
Other personal injury	5,083	19.4	5,324	20.3	5,596	21.1	5,921	22.1
Property damage	4,470	17.0	4,534	17.3	4,564	17.2	4,429	16.5
Torts to land[a]	558	2.1	547	2.1	455	1.7	462	1.7
Total torts	26,249	22.4	26,283	20.1	26,484	20.3	26,837	19.3
Real property	5,930	5.1	7,928	6.1	7,932	6.1	12,319	8.9
Contracts	22,905	19.5	23,998	18.4	23,907	18.3	25,727	18.5
Statutory actions	60,051	51.2	70,372	53.9	70,694	54.1	73,035	52.6
Other actions	2,185	1.9	2,016	1.5	1,550	1.2	852	0.6
Total civil filings	117,320	—	130,597	—	130,567	—	138,770	—

	1979		1980		1981		1982	
Federal Tort Action	Filings	%	Filings	%	Filings	%	Filings	%
Fed. Employer Liab. Act	1,540	5.2	1,990	6.0	1,876	5.5	2,017	5.8
Airplane	532	1.8	660	2.0	545	1.6	589	1.7
Marine	4,777	16.3	4,917	14.9	5,166	15.0	5,272	15.2
Motor vehicle	5,534	18.8	5,786	17.5	5,708	16.6	6,095	17.5
P.I. product liability	5,318	18.1	6,876	20.8	8,028	23.4	7,908	22.7
Other personal injury	6,255	21.3	7,288	22.1	7,997	23.3	8,253	23.7
Property damage	4,945	16.8	5,022	15.2	4,447	12.9	4,084	11.7
Torts to land[a]	464	1.6	486	1.5	586	1.7	555	1.6
Total torts	29,365	19.0	33,025	19.6	34,353	19.0	34,773	16.9
Real property	11,412	7.4	10,581	6.3	8,301	4.6	8,257	4.0
Contracts	36,898	23.9	49,052	29.1	51,159	28.3	67,276	32.6
Statutory actions	76,067	49.2	75,574	44.8	86,172	47.7	95,294	46.2
Other actions	924	0.6	557	0.3	591	0.3	593	0.3
Total civil filings	154,666	—	168,789	—	180,576	—	206,193	—

Table B.4—continued

Federal Tort Action	1983 Filings	1983 %	1984 Filings	1984 %	1985 Filings	1985 %
Fed. Employer Liab. Act	2,102	5.7	1,914	5.0	2,221	5.3
Airplane	792	2.1	748	2.0	613	1.5
Marine	4,829	13.0	4,455	11.7	4,367	10.4
Motor vehicle	6,413	17.3	6,502	17.1	6,776	16.1
P.I. product liability	8,026	21.6	9,677	25.4	12,507	29.7
Other personal injury	9,990	26.9	0,177	26.8	11,076	26.3
Property damage	4,332	11.7	4,049	10.6	4,033	9.6
Torts to land	613	1.7	502	1.3	489	1.2
Total torts	37,097	15.3	38,024	14.5	42,082	15.4
Real property	9,054	3.7	8,690	3.3	9,629	3.5
Contracts	84,017	34.7	88,231	33.7	102,642	37.5
Statutory actions	111,100	45.9	125,953	48.2	118,833	43.4
Other actions	574	0.2	587	0.2	484	0.2
Total civil filings	241,842	—	261,485	—	273,670	—

SOURCE: *Annual Report of the Director of the Administrative Office of the United States Courts*, 1975–1985, and information supplied in a letter to The RAND Corporation from David L. Cook, Administrative Office of the United States Courts, April 11, 1986.

[a] Categorized by the Administrative Office as a subset of "Real Property" filings. We have included this group of cases as part of "Torts."

Appendix C

AIRAC AUTOMOBILE ACCIDENT STUDY DATA

This appendix contains data from a survey of insured auto accident injury compensation. The study was conducted by the All-Industry Research Advisory Committee (AIRAC),[1] which collected data on 42,204 automobile accidents involving compensation paid by insurance companies to injured claimants in 1977.

Claimants who received compensation from bodily injury liability insurance received an average of $7,287 in 1977 dollars if they filed a lawsuit and $1,842 if they did not (see Table C.1). Since AIRAC reported an average of 1.32 injured claimants per accident, we estimate the average compensation paid was $9,619 per accident with a lawsuit.[2]

The 20 percent of the injured claimants who filed suit received 50 percent of the compensation paid by bodily injury liability insurance. It is probable that more seriously injured people were more likely to sue. However, we do not have data to show whether people with the same degree of injury got the same on average whether they sued or not.

Uninsured motorist insurance coverage resulted in average paid compensation of $7,098 per injured claimant in 1977 dollars if they filed a lawsuit and $2,596 if they did not (see Table C.2). Since AIRAC reported an average of 1.29 injured "uninsured motorist" claimants per accident, we estimate the average compensation paid was $9,156 per accident with a lawsuit.

The 15 percent of the injured claimants who filed suit received 32 percent of the compensation paid by uninsured motorist insurance.

Because AIRAC did not collect comparable lawsuit data on "Personal Injury Protection" (PIP) claims, we only have information on rates of compensation after suit for bodily injury and uninsured motorist insurance. However, we can make an estimate for PIP claims as follows: AIRAC reported that 17 percent of the 19,665 claimants in the study (about 3,343) had legal representation. If we assume that

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[1] *Automobile Injuries and Their Compensation in the United States*, All-Industry Research Advisory Committee (AIRAC), Alliance of American Insurers, Chicago, Illinois, 1979.

[2] $7,287 per claimant times 1.32 claimants per accident, assuming that if any claimant filed a lawsuit, then all claimants filed suit. AIRAC did not report the average number of lawsuits per accident.

Table C.1

AIRAC DATA ON BODILY INJURY CLAIMANTS AND COMPENSATION IN 1977

(In 1977 dollars)

Claimant Characteristics	Claimants		Compensation	
	Number	Percent of Total	Average Dollars per Claimant	Percent of Total
Lawyer representation				
Not represented	11,528	53.5	997	18.2
Represented	10,004	46.5	5,150	81.8
Lawsuit status				
No suit filed	17,245	80.0	1,842	50.4
Suit settled	4,095	19.0	7,237	47.0
Suit tried to verdict	192	0.9	8,343	2.5
Total claimants in suits	4,287	19.9	7,287	49.6
Total, all claimants	21,532	100.0	2,926	100.0

SOURCE: All-Industry Research Advisory Committee, *Auto Injuries and Their Compensation in the United States*, Alliance of American Insurers, Chicago, Illinois, 1979.

represented claimants were equally likely to file suit in uninsured motorist and PIP insurance claims (31 percent), then an estimated 1,036 PIP claimants in the AIRAC study filed suit. AIRAC reported that 42 percent of PIP compensation was paid to lawyer-represented claimants. If we assume that represented claimants who filed suit received the same percent of compensation in uninsured motorist and PIP insurance claims (42 percent), then an estimated $3,003,000 went to the estimated 1,036 PIP claimants in the AIRAC study who filed suit ($2,899 per claimant). AIRAC reported that the average for all PIP claimants, whether represented or not, was $920.

Thus, we estimate that claimants who were paid compensation from PIP insurance received an average of approximately $2,900 in 1977 dollars if they filed a lawsuit. Since AIRAC reported an average of 1.20 PIP claimants per accident, we estimate the average compensation paid was $3,480 per accident with a lawsuit. The estimated 5 percent of the PIP claimants who filed suit received an estimated 18 percent of the compensation paid by PIP insurance.

The medical payments component of auto insurance had 8,737 claims but accounted for only 5 percent of all compensation paid in the AIRAC study. In the absence of any AIRAC data on the percent of

Table C.2

AIRAC DATA ON UNINSURED MOTORIST CLAIMANTS AND COMPENSATION IN 1977
(In 1977 dollars)

	Claimants		Compensation	
Claimant Characteristics	Number	Percent of Total	Average Dollars per Claimant	Percent of Total
Lawyer representation				
Not represented	1,340	52.3	1,493	24.0
Represented	1,220	47.7	5,191	76.0
Lawsuit status				
No suit filed	2,185	85.4	2,596	68.1
Suit settled	320	12.5	6,978	26.8
Suit tried to verdict	55	2.1	7,800	5.1
Total claimants in suits	375	14.6	7,098	31.9
Total, all claimants	2,560	100.0	3,255	100.0

SOURCE: All-Industry Research Advisory Committee, *Auto Injuries and Their Compensation in the United States*, Alliance of American Insurers, Chicago, Illinois, 1979.

that small medical payment amount that went for lawsuits, we assume it was the same 18 percent that was calculated for PIP.

Before combining the data to obtain an overall average for the various types of auto insurance (bodily injury, liability, uninsured motorist, PIP, and medical payments), an adjustment must be made to account for the fact that the same claimant was sometimes counted more than once in the AIRAC data. Dollars were not double-counted and do not need to be adjusted.

The AIRAC study assumed that medical payment insurance claimants with attorney involvement would already be counted under a related bodily injury, uninsured motorist, or PIP claim. For PIP claimants, only 11 percent of those who hired lawyers did so to assist in collecting the PIP claim only; 89 percent also hired the lawyer to pursue a tort claim that was already counted under bodily injury or uninsured motorist insurance.[3] Thus, to avoid double-counting claimants when we add them, we will sum bodily injury plus uninsured motorist plus 11 percent of the PIP claimants, and none of the medical payments claimants.

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[3] L. Soular, *Attorney Representation*, All-Industry Research Advisory Council, Report A80-2, Schaumburg, Illinois, June 1980, pp. 5, 7.

Combining the data for bodily injury, uninsured motorist, PIP, and medical payments for insured auto accidents, we estimate that an average of $7,902 per claimant was paid (in 1977 dollars) to insurance claimants who filed suit. (No-fault payments were included in these categories.) Based on the AIRAC data, an average of 1.31 claimants per accident received insurance compensation. We estimate that the average compensation was $10,375 per accident that involved a lawsuit. Overall, an estimated 41 percent of the combined bodily injury, uninsured motorist, medical payment, and PIP insurance compensation payments went to injured claimants who filed a lawsuit. An estimated 13 percent of the claims involved lawsuits.

Appendix D

INSURANCE INDUSTRY DATA

This appendix presents detailed insurance industry data provided by various insurance companies and organizations. First we discuss data on compensation paid through various lines of insurance. Then we discuss legal fees and expenses and claims-processing costs.

We appreciate the cooperation of the Insurance Services Office (ISO), the A. M. Best Company, the Insurance Information Institute, the All-Industry Research Advisory Council, the Alliance of American Insurers, the American Insurance Association, and several insurance companies, in supplying both published and unpublished data and other assistance to our study.

DATA ON COMPENSATION PAID

Automobile Liability Insurance Compensation Paid

The automobile liability insurance industry pays the lion's share of compensation paid to people injured in auto and other motor vehicle accidents. However, the insurance industry uses a variety of definitions of compensation ("loss") for different purposes. For purposes of our study, we will use the industry's data on "direct loss paid" whenever possible, as that is the best information on the amount of money paid to claimants in 1985. The industry's term "loss incurred" is "loss paid" during the year plus the net change in reserves for estimated future payments to claimants. Depending on whether reserves for future payments are growing and how fast, and depending on whether reserves in prior years have been adequate, the loss incurred data (the data most often reported in insurance publications) can differ significantly from the loss paid data. While loss incurred is useful in setting premium levels, we are most interested in the compensation actually paid in 1985. Hence, we need to use "loss paid" data for our calculations.

Another important distinction among insurance loss numbers is the difference between "net loss" and "direct loss." Here the term "net" refers to figures that have been adjusted for insurance company payments made to and received from reinsurance companies. Such reinsurance companies assume part of the risk taken on by the insurer who wrote the insurance contract "directly" with the car owner, manufacturer, or home owner. Because some of these reinsurers (especially some who are foreign-based) do not report their losses in industry-wide reference sources such as the publications of the A. M. Best Company, the use of net loss figures somewhat understates the true value of total compensation paid in the United States. Net loss for a single line of insurance business is the sum of all direct loss plus payments to reinsurers minus the recovery from those reinsurers. This net loss amount can be anywhere from 4 percent less (for the auto liability line) to 17 percent less (for the medical malpractice line) to 35 percent less (for the other liability line) than the direct loss payment to claimants (and can actually be more in lines of insurance such as accident and health).[1] For purposes of our study, an accurate assessment of automobile insurance compensation must use loss figures that are paid (rather than incurred) and direct (rather than net of reinsurance).

A total of $24.4 billion was paid by insurers to auto accident liability claimants in 1985. This includes payments for claims without a lawsuit and for settlements and verdicts resulting from lawsuits. As shown in Table D.1, the annual rate of growth from 1979 through 1985 averaged 12.0 percent. During that same time period, the Consumer Price Index rose at an average annual rate of 6.9 percent.

The 12.0 percent annual growth rate cited above is for the total auto liability compensation paid by insurers on all claims combined. Data are not available on the growth rate in compensation paid per auto bodily injury claim. However, the Insurance Services Office[2] has information on the growth rate in compensation plus allocated loss adjustment expenses (ALAE) per auto liability claim. Of total compensation plus ALAE paid in 1985 for all auto liability claims, about 95 percent was for compensation,[3] so the growth rate in compensation plus ALAE per claim is a reasonable proxy for the growth rate in compensation per claim. As shown in Table D.2, the average annual growth rate per auto bodily injury claim was 12.3 percent for personal autos and 15.2 percent for commercial autos between 1978 and 1985.

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[1] A. M. Best Company, *Best's Aggregates and Averages: Property-Casualty 1986*, Oldwick, New Jersey, 1986, p. 51.

[2] The Insurance Services Office is a nonprofit organization that collects, analyzes, and reports on rating, statistical, actuarial, and related information for over half of the insurance companies. ISO has data for about 85 percent of the general liability universe, but somewhat less than that percent for the auto liability universe. Not all insurers contribute information to the ISO database.

[3] Calculated from net losses and net ALAE data in Table D.10 and A. M. Best Company, *Best's Aggregates and Averages: Property-Casualty 1986*, Oldwick, New Jersey, 1986, p. 51. Data on direct ALAE paid are not available for auto liability.

Table D.1

AUTOMOBILE LIABILITY COMPENSATION PAID
BY INSURERS, 1979–1985

	Direct Losses Paid		Direct Losses Incurred	
Year	$000	Annual Percent Growth	$000	Annual Percent Growth
1979	12,313,510	NA	14,313,507	NA
1980	13,531,947	9.9	15,573,061	8.8
1981	15,145,802	11.9	17,836,665	14.5
1982	17,126,487	13.1	19,614,120	10.0
1983	18,685,259	9.1	21,619,410	10.2
1984	21,403,791	14.5	24,803,604	14.7
1985	24,380,584	13.9	29,659,856	19.6
Average		12.0		12.5

SOURCE: Letters from Insurance Services Office, Inc., New York, to James S. Kakalik, The RAND Corporation, May 12 and October 16, 1986. ISO derived the data from *Executive Data Service*, A. M. Best Company, Oldwick, New Jersey.

NOTE: Average annual percent growth rates were calculated at RAND by fitting a compound growth curve to the data points.

NA = not available.

Personal and commercial auto property damage liability claims compensation plus ALAE grew at 9.8 and 10.6 percent average rates, respectively, between 1979 and 1985.

The average growth rate per claim for personal and commercial auto bodily injury and property damage, weighted by the compensation paid in each of the lines, was 12.0 percent.[4] The growth rate for all claims was about the same as the growth per claim because the number of auto liability claims has not changed much in recent years.[5]

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[4] In 1985, personal auto liability direct losses incurred were 77 percent of the total for personal and commercial auto (A. M. Best Company, *Best's Aggregates and Averages: Property-Casualty 1986*, Oldwick, New Jersey, 1986, p. 66). For personal auto liability, bodily injury compensation paid was 71 percent and property damage was 29 percent of the total (data provided by Peter Schultheiss, ISO, to The RAND Corporation, July 8, 1986, from calendar years 1982 through 1984, averaged from ISO *Expense Call* based on agency companies that are members of ISO in 40 or more states).

For commercial auto liability, bodily injury compensation paid was 65 percent and property damage was 35 percent of the total (unpublished ISO data on all claims for 1981 accidents closed as of 1985, provided by Paul Braithwaite, ISO, to The RAND Corporation, February 18, 1986).

[5] Interview with Peter Schultheiss, ISO, July 8, 1986.

Table D.2

AVERAGE AUTO LIABILITY COMPENSATION PLUS ALLOCATED LOSS ADJUSTMENT EXPENSES PAID PER CLAIM BY INSURERS

(Including claims with and without lawsuits)

Year/ Quarter	Average Claim ($)			
	Personal Auto Bodily Injury	Commercial Auto Bodily Injury	Personal Auto Property Damage	Commercial Auto Property Damage
1978/Q1	2,539	NA	509	NA
1978/Q2	2,706	NA	537	NA
1978/Q3	2,728	NA	568	NA
1978/Q4	2,811	NA	598	NA
1979/Q1	2,938	NA	596	NA
1979/Q2	3,069	4,824	621	628
1979/Q3	3,123	5,034	642	652
1979/Q4	3,282	5,219	670	677
1980/Q1	3,296	5,404	673	706
1980/Q2	3,565	5,749	686	736
1980/Q3	3,376	6,004	690	752
1980/Q4	3,678	6,312	725	774
1981/Q1	3,662	6,640	748	795
1981/Q2	4,006	6,957	770	818
1981/Q3	3,904	7,228	790	851
1981/Q4	4,096	7,604	821	875
1982/Q1	4,146	7,895	809	892
1982/Q2	4,386	7,806	837	908
1982/Q3	4,452	8,213	857	930
1982/Q4	4,673	8,735	871	970
1983/Q1	4,971	8,975	875	990
1983/Q2	4,911	9,456	890	1008
1983/Q3	4,906	9,717	909	1013
1983/Q4	5,168	9,900	936	1017
1984/Q1	5,235	10,167	918	1045
1984/Q2	5,373	10,182	965	1070
1984/Q3	5,375	10,041	1002	1101
1984/Q4	5,776	10,238	1045	1126
1985/Q1	5,617	10,342	1029	1149
1985/Q2	6,137	NA	1066	NA
1985/Q3	6,166	NA	1106	NA
Average percent annual growth	12.3%	15.2%	9.8%	10.6%

SOURCE: Letter from Paul Braithwaite, Insurance Services Office, New York, to James S. Kakalik, The RAND Corporation, April 25, 1986, citing the ISO database. Average annual growth rates calculated at RAND by fitting a compound growth curve to the data points. Personal auto data are for the quarter year. Commercial auto data are for 12-month periods ending with the quarter listed.

NA = not available.

Medical Malpractice Insurance Compensation Paid

A total of $1.5 billion was paid by insurers to medical malpractice claimants in 1985. This includes payments for the small percent of claims without a lawsuit and for the settlements and verdicts resulting from the great majority of claims that were in suit. The annual rate of growth in compensation paid from 1979 through 1985 averaged 25.0 percent. (See Table D.3.) That rate is for the total medical malpractice compensation paid by insurers on all claims combined. The ISO has information on the growth rate in compensation per medical malpractice claim; as shown in Table D.4, the rate was 13.6 percent between 1982 and 1985.

Table D.3

MEDICAL MALPRACTICE COMPENSATION PAID BY INSURERS, 1979-1985

	Direct Losses Paid		Direct Losses Incurred	
Year	$000	Annual Percent Growth	$000	Annual Percent Growth
1979	391,582	NA	938,075	NA
1980	521,849	33.3	1,145,659	22.1
1981	662,252	26.8	1,469,182	28.3
1982	839,322	26.7	1,793,875	22.1
1983	1,064,447	26.8	1,990,308	11.0
1984	1,197,088	12.5	2,348,774	18.0
1985	1,544,563	29.0	3,517,067	49.7
Average		25.0		22.6

SOURCE: Letters from Insurance Services Office, Inc., New York, to James S. Kakalik, The RAND Corporation, May 12 and October 16, 1986. ISO derived the data from *Executive Data Service*, A. M. Best Company, Oldwick, New Jersey.

NOTE: Average annual percent growth rates were calculated at RAND by fitting a compound growth curve to the data points.

NA - not available.

Table D.4

AVERAGE MEDICAL MALPRACTICE COMPENSATION PAID PER CLAIM BY INSURERS
(Including claims with and without lawsuits)

Year/ Quarter	Medical Malpractice Average Claim ($)
1982/Q3	32,624
1982/Q4	35,132
1983/Q1	36,900
1983/Q2	37,858
1983/Q3	40,644
1983/Q4	40,812
1984/Q1	41,295
1984/Q2	42,504
1984/Q3	42,884
1984/Q4	43,644
1985/Q1	46,638
1985/Q2	49,473
1985/Q3	50,289
Average percent annual growth	13.6%

SOURCE: Letter from Paul Braithwaite, Insurance Services Office, New York, to James S. Kakalik, The RAND Corporation, April 25, 1986, citing the ISO database.

NOTE: Average percent annual growth rate calculated at RAND by fitting a compound growth cruve to the data points.

General Liability Insurance Compensation Paid

This general liability line of insurance, also known as "Other Liability," provides compensation for a wide range of claims arising from injury, property damage, or other losses. It can cover almost all potential tort litigation when responsibility arises from the ownership of real property ("slips and falls"), the manufacture and/or distribution of goods ("product liability"), and the operation of such enterprises as construction activity, parades, day-care centers, the dispensing of professional services or advice, and the like.

Two areas of general liability insurance have attracted the most attention in the last few years: claims arising from professional malpractice and injury from products. With the growth in losses from medical malpractice claims, that line began to be reported separately in 1975 from other general liability information. However, litigation concerning the actions of lawyers, architects, engineers, accountants, and directors and officers of corporations in their professional capacities still is part of the general liability insurance line. Product liability has to do with injuries due to products with defective design, manufacture, or labeling, which may result in liability by the maker, the distributor, or the lessor who puts such items into the stream of commerce. However, there are no clear-cut data demarcations for product liability. Product liability coverage may also be found in commercial multiperil policies. As a result, we will look at general liability compensation in the aggregate instead of by type of tort.

In Table D.5, ISO analysis of data collected by the A. M. Best Company shows a steady increase in total direct losses paid in this line of insurance. With a relatively high average growth rate of 21.3 percent per year in compensation paid from 1979 to 1985, the total direct loss paid by insurers reached $7.0 billion in 1985. This includes payments for claims without lawsuits and for settlements and verdicts resulting from lawsuits.

Table D.5

GENERAL LIABILITY COMPENSATION PAID BY INSURERS

	Direct Losses Paid		Direct Losses Incurred	
Year	$000	Annual Percent Growth	$000	Annual Percent Growth
1979	2,167,402	NA	4,154,490	NA
1980	2,611,717	21	4,589,460	11
1981	3,122,377	20	4,903,744	7
1982	3,696,376	18	5,575,978	14
1983	4,441,793	20	6,079,253	9
1984	5,642,441	27	8,226,915	35
1985	7,002,610	24	14,195,156	73
Average		21.3		19.8

SOURCE: Letters from Insurance Services Office, Inc., New York, to James S. Kakalik, The RAND Corporation, May 12 and October 16, 1986. ISO derived the data from *Executive Data Service*, A. M. Best Company, Oldwick, New Jersey.

NOTE: Average annual percent growth rates were calculated at RAND by fitting a compound growth curve to the data points.

NA - not available.

The 21.3 percent annual growth rate just cited is for total general liability compensation paid by insurers on all claims combined. The ISO has conducted a survey of general liability claims closed in 1979 through 1984 by a sample of insurance companies representing about 13 percent of all general liability claims. The companies surveyed were all large insurers; they reported on claims numbering from 93,000 in 1979 up to 130,000 in 1984.[6] From that survey's data, we calculated an 18.0 percent annual growth rate in compensation paid per claim between 1979 and 1985. See Table D.6. A single injury may generate multiple claims, especially if there are multiple defendants.

Based on ISO's *Special Call Data*, we can estimate the total compensation paid through lawsuits. Although ISO does not note the existence of a lawsuit in their data, the size of the "allocated loss adjustment expense" (ALAE) is known for each claim. ALAE includes legal fees and expenses.[7] From interviews with ISO and several insurance companies, we learned the following: (1) Lawsuits almost

Table D.6

AVERAGE GENERAL LIABILITY COMPENSATION
PAID PER CLOSED CLAIM BY INSURERS,
1979-1984
(Including claims with and without lawsuits)

Year	Average Compensation per Closed Claim ($)	Annual Percent Growth
1979	2355	NA
1980	2815	19.5
1981	3241	15.1
1982	4015	23.9
1983	4711	17.3
1984	5289	12.3
Average		18.0%

SOURCE: Interview with Paul Braithwaite and Michael Fusco, Insurance Services Office, *Special Call Data*, New York, February 18, 1986 (unpublished).

NOTE: Average percent annual growth rates calculated at RAND by fitting a compound growth curve to the data points.

NA = not available.

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[6] Interview with Paul Braithwaite and Michael Fusco, ISO, *Special Call Data*, New York, unpublished, February 18, 1986. Data on loss paid per claim comparable to those shown in Table 3.5 for auto claims are not available for general liability insurance from ISO.

[7] See Sec. V for a fuller discussion.

always entail legal fees and/or expenses, so claims with zero ALAE are almost never lawsuits. A total of 64 percent of all general liability claims in 1984 had zero ALAE and hence had a very high probability of not being lawsuits. (2) Any general liability claim with ALAE over $1,000 has a high probability of being a lawsuit because claims that are not suits usually do not have expenses over $1,000. A total of 17 percent of all general liability claims in 1984 had ALAE over $1000 and hence had a high probability of being lawsuits. (3) Claims with low but nonzero expenses ($1 to $1,000 in ALAE) may or may not have an associated lawsuit. This low-expense category accounted for the remaining 19 percent of all general liability claims closed in 1984. See Table D.7, where the estimate for general liability lawsuits in 1984 is based on the assumptions that all claims paid with an ALAE greater than $1,000 occurred after a suit was filed and that one-half of the claims paid with an ALAE of $1 to $1,000 also were suits.

An estimated 77 percent of the general liability compensation paid in 1984 was for lawsuits. This compares with 33 percent for auto and 90 percent for medical malpractice claims.

Table D.7

GENERAL LIABILITY DATA PER CLOSED CLAIM, 1984

Expenses (ALAE) ($)	Total Claims (%)	Average Compensation (Including Zeros) ($)	Total Compensation (%)
0	63.6	1,342	16.1
1-1,000	19.0	3,856	13.9
1,001-5,000	10.9	9,110	18.8
5,001-10,000	3.2	18,103	10.8
10,001-15,000	1.2	32,988	7.6
15,001-25,000	1.0	43,321	8.1
25,001-50,000	0.6	85,574	10.5
50,001-100,000	0.2	130,607	6.1
100,001-250,000	0.1	226,292	4.6
250,000+	.0	418,280	3.6
Total, all claims	100.0	5,289	100
Total, claims with expenses $1,000+	17.3	21,340	70
Total, suits	26.9	15,151	77

SOURCE: Interview with Paul Braithwaite and Michael Fusco, Insurance Services Office, *Special Call Data*, New York, February 18, 1986 (unpublished).

Given that $7.0 billion was paid by insurers in compensation to all general liability claimants in 1985, we estimate that $5.4 billion of that amount came after a suit had been filed (using the 77 percent of dollars that went for claims in suit).

Multiperil Insurance Compensation Paid

Designed to cover a wide range of potential incidents, these lines can conveniently combine protection for some or all perils such as fire, theft, liability, auto, and other perils into one package. Because insurance in this line can be conveniently written at a lower cost than separate policies covering the same perils, homeowners and commercial property owners often purchase these insurance packages. Variations among packages make it difficult to generalize about the possible extent of their coverage, but these packages can insure against virtually any tort.

Because these multiperil policies are not exclusively written for paying tort claims, we must estimate the percentage that is used for that purpose. The ISO has data on liability compensation in multiperil policy claims. As can be seen from Table D.8, the percentage of total compensation paid for liability as opposed to other types of losses varies markedly with the type of multiperil insurance. Commercial enterprises, with their greater contact with people and greater potential for injury-causing activity, have a greater portion of multiperil compensation going for liability claims (62.4 percent) than do homeowners (9.3 percent).

Table D.8

MULTIPERIL LIABILITY CLAIM DATA, 1984

	Liability Claims as Percent of Total Claims	
Multiperil Line	Compensation (%)	Number of Claims (%)
Homeowners	9.3	6.7
Commercial	62.4	49.0

SOURCE: Interview with Paul Braithwaite, Insurance Services Office, Inc., New York, May 10, 1986.

For the commercial multiperil line of insurance, direct paid losses were $6.73 billion in 1985 (see Table D.9). Since 62.4 percent of that total was for liability compensation, we estimate that $4.20 billion was paid in compensation for tort claims in 1985 through the commercial multiperil line of insurance. The annual growth rate from 1979 to 1985 was an estimated 15.6 percent.

In 1985, direct losses paid in the homeowners multiperil line were $9.27 billion.[8] Since 9.3 percent of that total was for liability compensation (see Table D.8), we estimate that $0.86 billion was paid in compensation for tort claims in 1985 through the homeowner's multiperil line of insurance. Note that nearly five times as much is paid through commercial as through homeowners multiperil insurance. Also note that most purchasers of commercial multiperil insurance are the smaller businesses, not the largest corporations.

Table D.9

COMMERCIAL MULTIPERIL COMPENSATION
PAID BY INSURERS, 1979-1985

	Direct Losses Paid		Direct Losses Incurred	
Year	$000	Annual Percent Growth	$000	Annual Percent Growth
1979	2,845,458	NA	3,630,115	NA
1980	3,504,495	23	4,111,611	13
1981	3,857,743	10	4,494,851	9
1982	4,610,591	20	5,225,928	16
1983	4,828,680	5	6,090,435	17
1984	6,553,424	36	7,787,864	28
1985	6,728,095	3	8,792,104	13
Average		15.6		16.3

SOURCE: Letters from Insurance Services Office, Inc., New York, to James S. Kakalik, The RAND Corporation, May 12 and October 16, 1986. ISO derived the data from *Executive Data Service*, A. M. Best Company, Oldwick, New Jersey.

NOTE: Average annual percent growth rates were calculated at RAND by fitting a compound growth curve to the data points.

NA = not available.

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[8] A. M. Best Company, *Best's Aggregates and Averages: Property-Casualty 1986*, Oldwick, New Jersey, 1986, p. 51.

DATA ON LEGAL FEES AND OTHER ALLOCATED LOSS ADJUSTMENT EXPENSES

Insurers have a reasonably standardized system of accounting for legal fees, expenses, and other costs. The two common indicators are "allocated loss adjustment expense" (ALAE) and "unallocated loss adjustment expense" (ULAE).

Though the actual makeup of these accounting concepts may vary somewhat from company to company and by line of insurance, ALAE refers to those expenses that can be directly attributed and allocated to a particular claim. For example:[9]

- Attorney's fees for claims in suit
- Court and other specific items of expense such as:
  - — Medical examination to determine the extent of company's liability
  - — Expert medical or other testimony
  - — Laboratory and X-ray
  - — Autopsy
  - — Stenographic
  - — Witnesses and summonses
  - — Copies of documents

The following usually are not included as ALAE by insurers:

- Salaries and traveling expenses of insurance company employees (other than amounts allocated as "in-house" attorney's fees for claims in suit)
- Overhead
- Adjuster's fees (fees paid to independent adjusters for adjusting claims)[10]

Thus, insurance company salaries and expenses involved in claim settlement, such as routine claim-processing costs, the overhead of the entire claims department, and fees paid to claims adjusters, usually are totaled under the ULAE category.

In short, ALAE is the extra expense paid and allocated to a specific claim that requires more than routine claim handling (predominantly legal fees and related expenses); ULAE is the insurance company expense of processing claims that is not allocated to any specific claims. It is from ALAE data that insurance companies' costs of legal fees and related expenses can be estimated.

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[9] See, for example, ISO, *Statistical Plan*, Part I, Sec. C, p. 13, effective July 1, 1978, New York. Insurance companies may use different definitions to determine ALAE in their financial statements than they use in their data submissions to ISO. Companies that do not report to ISO may use other definitions.

[10] Ibid.

As with compensation (loss) data, ALAE figures can be variously reported as either incurred or paid and as either direct or net. Again, "incurred" includes all money that is actually paid during a year plus changes in reserves for future payments. The distinction between direct and net is whether an adjustment has been made for the costs paid to and reimbursed from reinsurers. Ideally, our study would use only direct, paid ALAE to estimate the total legal expenses of insurers in any one year, but such data are not available for all insurance lines and for all years.

ALAE for Automobile Liability Insurance

A total of $1.14 billion in net ALAE was paid by insurers for auto accident claims in 1985. This includes payments for claims with and without a lawsuit (see Table D.10). The annual rate of growth from 1980 through 1985 averaged 6.3 percent.

Table D.10

INSURERS' ALLOCATED LOSS ADJUSTMENT EXPENSE PAID FOR AUTOMOBILE LIABILITY CLAIMS, 1980-1985

Year	Net ALAE Paid ($000)	Annual Percent Growth
1980	833,859	N.A.
1981	905,532	8.6
1982	1,005,853	11.1
1983	1,084,194	7.8
1984	1,067,345	-1.6
1985	1,140,525	6.8
Average		6.3

SOURCE: Letters from Insurance Services Office, Inc., New York, to James S. Kakalik, The RAND Corporation, April 23 and October 16, 1986. Data were derived by ISO from analysis of Annual Statement Schedule P computer tapes from A. M. Best and Co., Oldwick, New Jersey.

NOTE: Average percent annual growth rate calculated at RAND by fitting a compound growth curve to the data points.

NA = not available.

Similar data are not available on the direct ALAE paid, but we can estimate it using the ratio of direct loss adjustment expenses (including allocated and unallocated) to net loss adjustment expenses. For the auto liability line of insurance, direct LAE incurred were 98.9 percent of net LAE (net of reinsurance) incurred.[11] Multiplying the $1.14 billion in net ALAE times 98.9 percent yields an estimate of $1.13 billion in direct ALAE paid in 1985. Of the $1.13 billion, an estimated $0.15 billion was for property damage liability.[12]

The 6.3 percent annual growth rate cited above is for the total auto liability ALAE paid by insurers on all claims combined. Comparable industry-wide data on growth in ALAE paid per claim are not available; however, we know from our analysis of auto compensation data that the growth rate in compensation for all claims was the same as the growth rate for compensation per claim (12.0 percent). Therefore, we shall assume that the 6.3 percent growth rate in ALAE for all auto claims is essentially the same as the growth rate in ALAE per auto claim.

Not all of the $1.13 billion was for lawsuits. Legal counsel may be requested by an insurer when a substantial claim is presented, an opinion is required regarding potential liability, or some other situation where ordinary claims processing is insufficient. However, in the typical case, counsel usually is not sought until a suit has been filed. At that point, a member of the bar must become involved simply to forestall any default judgement. A quick settlement may follow the filing of the suit, and the total ALAE for the claim may be limited to the cost of drafting the answer.

Data on the percent of auto ALAE devoted to lawsuits are not available. However, later in this appendix we present data for medical malpractice ALAE (97.9 percent is for lawsuits) and for general liability ALAE (an estimated 98.3 percent is for lawsuits). Assuming that the same 98 percent holds for auto liability ALAE yields an estimate of $1.11 billion in direct paid ALAE for auto accident litigation in 1985 (not including "ALAE-equivalent" expenditures outside the traditional insurance industry).

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[11] Calculated from A. M. Best Company, *Best's Aggregates and Averages: Property-Casualty 1986*, Oldwick, New Jersey, 1986, pp. 66, 67.

[12] In 1985, personal auto liability direct LAE incurred were 78 percent of the total for personal and commercial auto. (Ibid., p. 66.)

For personal auto liability, bodily injury net ALAE incurred was 87 percent, and property damage was 13 percent of the total (ISO *Expense Call* data from calendar years 1982 through 1984, averaged, from agency companies that are members of ISO in 40 or more states. Data were provided by Peter Schultheiss, ISO, to The RAND Corporation, July 8, 1986).

For commercial auto liability, bodily injury ALAE paid was 85 percent and property damage was 15 percent of the total (unpublished ISO data on all claims for 1981 accidents closed as of 1985, provided by Paul Braithwaite, ISO, to The RAND Corporation, February 18, 1986).

ALAE for Medical Malpractice Insurance

Because the vast majority of health care providers have malpractice insurance,[13] we can use insurance industry data as a useful source for estimating defendants' costs paid nationwide.

A total of $526 million was paid in defense costs by insurers for medical malpractice claims in 1985, as shown in Table D.11. The annual rate of growth in defense costs from 1980 through 1985 averaged 29.3 percent.

For the medical malpractice line of insurance, direct LAE incurred were 97.2 percent of net LAE incurred (net of reinsurance).[14] Multiplying the $526 million in net ALAE paid times 97.2 percent yields an estimate of $511 million in direct ALAE paid in 1985.

Table D.11

INSURERS' ALLOCATED LOSS ADJUSTMENT EXPENSE PAID FOR MEDICAL MALPRACTICE CLAIMS

Year	Net ALAE Paid ($000)	Annual Percent Growth
1980	126,643	NA
1981	173,249	36.8
1982	228,303	31.8
1983	264,290	15.8
1984	309,153	17.0
1985	525,596	70.0
Average		29.3

SOURCE: Letters from Insurance Services Office, Inc., New York, to James S. Kakalik, The RAND Corporation, April 23 and October 16, 1986. Data were derived by ISO from analysis of Annual Statement Schedule P computer tapes from A. M. Best and Co., Oldwick, New Jersey.

NOTE: Average percent annual growth rate calculated at RAND by fitting a compound growth cruve to the data points.

NA = not available.

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[13] Over 95 percent of physicians have some malpractice insurance according to H. Jacobs, *The Spectre of Malpractice*, Nationwide Press, Pueblo, Colorado, 1978, p. 65.

[14] Calculated from A. M. Best Company, *Best's Aggregates and Averages: Property-Casualty 1986*, Oldwick, New Jersey, 1986, pp. 66, 67. Note that LAE is ALAE plus ULAE.

The 29.3 percent annual growth rate cited above is for the total medical malpractice ALAE paid by insurers on all claims combined. The ISO has information on the growth rate per medical malpractice claim. As shown in Table D.12, the average annual growth rate per medical malpractice claim was 15.7 percent between 1982 and 1985.

ALAE for General Liability Insurance

In Table D.13, ISO analysis of data collected by the A. M. Best Company shows a steady increase in total ALAE paid in this line of insurance.

With an average growth rate of 15.5 percent per year from 1980 to 1985, the total net ALAE paid by insurers reached $1.41 billion in

Table D.12

AVERAGE MEDICAL MALPRACTICE ALLOCATED LOSS ADJUSTMENT EXPENSE PAID PER CLAIM BY INSURERS

(Including claims with and without lawsuits)

Year/ Quarter	Medical Malpractice Average Claim ($)
1982/Q3	9,121
1982/Q4	9,540
1983/Q1	9,760
1983/Q2	9,914
1983/Q3	10,257
1983/Q4	10,399
1984/Q1	10,608
1984/Q2	10,972
1984/Q3	11,360
1984/Q4	11,973
1985/Q1	13,014
1985/Q2	13,635
1985/Q3	14,715
Average	15.7

SOURCE: Letter from Paul Braithwaite, Insurance Services Office, New York, to James S. Kakalik, The RAND Corporation, April 25, 1986, citing the ISO database.

NOTE: Average percent annual growth rate calculated at RAND by fitting a compound growth curve to the data points.

1985. This includes expenses for claims but with and without lawsuits. Similar data are not available on the direct ALAE paid, but we can estimate it using the ratio of direct LAE (including allocated and unallocated) to net LAE. For the general liability line of insurance, direct LAE incurred were 126 percent of net LAE incurred (net of reinsurance).[15] Multiplying the $1.41 billion in net ALAE paid times 126 percent yields an estimate of $1.78 billion in direct ALAE paid in 1985.

The 15.5 percent annual growth rate cited above is for total general liability ALAE paid by insurers on all claims combined. Data on ALAE paid per claim comparable to the data shown in Table D.12 for medical malpractice claims are not available for general liability insurance.

Based on the ISO *Special Call Data*, we can estimate the total ALAE paid through lawsuits[16] using the same logic that we used for

Table D.13

INSURERS' ALLOCATED LOSS ADJUSTMENT EXPENSE PAID FOR GENERAL LIABILITY CLAIMS

Year	Net ALAE Paid ($000)	Annual Percent Growth
1980	678,260	NA
1981	795,515	17.3
1982	983,342	23.6
1983	1,146,204	16.6
1984	1,194,802	4.2
1985	1,414,542	18.4
Average		15.5

SOURCE: Letters from Insurance Services Office, Inc., New York, to James S. Kakalik, The RAND Corporation, April 23 and October 16, 1986. Data were derived by ISO from analysis of Annual Statement Schedule P computer tapes from A. M. Best and Co., Oldwick, New Jersey.

NOTE: Average percent annual growth rate calculated at RAND by fitting a compound growth cruve to the data points.

NA = not available.

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[15] Ibid.

[16] The ISO has conducted a survey of general liability claims closed in 1984 by a sample of insurance companies representing about 13 percent of all general liability claims.

compensation. See Table D.14, where the estimate for general liability lawsuits in 1984 is based on the assumptions that all claims paid with an ALAE greater than $1,000 occurred after a suit was filed and that one-half of the claims paid with an ALAE of $1 to $1,000 also were suits.

An estimated 98.3 percent of the ALAE paid for general liability claims in 1984 was for lawsuits.

Given that $1.78 billion was paid by insurers in direct ALAE for all general liability claimants in 1985, we estimate that $1.75 billion of that amount came after a suit had been filed (using the 98.3 percent of dollars that went for claims in suit).

ALAE for Multiperil Insurance

The ALAE paid for all multiperil lines was $1.21 billion in 1985, net of reinsured ALAE, as can be seen from Table D.15. The growth rate per year from 1980 to 1985 averaged 14.9 percent.

Table D.14

1984 GENERAL LIABILITY ALAE DATA PER CLOSED CLAIM

Size of Expenses (ALAE) ($)	Total Claims (percent)	Average ALAE (Including Zeros) ($)	Total ALAE (percent)
0	63.6	0	0.0
1-1,000	19.0	314	3.4
1,001-5,000	10.9	2,402	15.1
5,001-10,000	3.2	7,066	12.8
10,001-15,000	1.2	12,199	8.5
15,001-25,000	1.0	19,216	10.9
25,001-50,000	0.6	34,299	12.7
50,001-100,000	0.2	67,307	9.5
100,001-250,000	0.1	149,312	9.1
250,000+	0.0	697,311	18.1
Total, all claims	100.0	1,745	100.0
Total, claims with expenses $1,000+	17.3	9,717	96.6
Total, suits	26.9	6,389	98.3

SOURCE: Interview with Paul Braithwaite and Michael Fusco, Insurance Services Office, *Special Call Data*, New York, February 18, 1986 (unpublished).

The companies surveyed were all large insurers and reported on 130,000 claims. Interview with Paul Braithwaite and Michael Fusco, Insurance Services Office, *Special Call Data*, New York, February 18, 1986 (unpublished).

Table D.15

INSURERS' ALLOCATED LOSS ADJUSTMENT EXPENSE PAID FOR MULTIPERIL INSURANCE CLAIMS

Year	Net ALAE Paid ($000)	Annual Percent Growth
1980	559,929	NA
1981	662,108	18.2
1982	820,886	24.0
1983	807,712	-1.6
1984	928,822	15.0
1985	1,209,263	30.2
Average		14.9

SOURCE: Letters from Insurance Services Office, Inc., New York, to James S. Kakalik, The RAND Corporation, April 23 and October 16, 1986. Data were derived by ISO from analysis of Annual Statement Schedule P computer tapes from A. M. Best and Co., Oldwick, New Jersey.

NOTE: Average percent annual growth rate calculated at RAND by fitting a compound growth cruve to the data points.

NA = not available.

For the multiperil lines of insurance, direct LAE incurred were 102.3 percent of net LAE insured (net of reinsurance).[17] Multiplying the $1.21 billion in net ALAE times 102.3 percent yields an estimate of $1.24 billion in direct ALAE paid in 1985.

Because these multiperil policies are not exclusively written for paying tort claims, we must estimate the percentage of ALAE that is used for that purpose. Discussions with ISO personnel indicated that precise data do not exist for multiperil insurance, but that like other lines of insurance nearly all ALAE is for legal fees and expenses, and nearly all multiperil litigation is over liability rather than fire, theft, or some other peril. We assume that approximately 95 percent of all multiperil insurance ALAE is for liability; we assume the remaining 5 percent is predominantly for miscellaneous nonlitigation ALAE for the fire, theft, and other nonliability components of the multiperil insurance. Thus, of the $1.24 billion in direct ALAE paid in 1985, an estimated $1.18

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[17] Calculated from A. M. Best Company, *Best's Aggregates and Averages: Property-Casualty 1986*, Oldwick, New Jersey, 1986, pp. 66, 67.

billion was for liability. Assuming the percentage of ALAE that went for lawsuits was the same as it was for the general liability line of insurance[18] (98.3 percent) yields an estimated $1.16 billion in ALAE paid on lawsuits in 1985 in the multiperil lines of insurance.

CLAIMS-PROCESSING COSTS (ULAE)

The ULAE are reported by insurers for all claims and lawsuits combined for each line of insurance. As shown in Table D.16, the total ULAE paid in 1985 was $2.00 billion for auto liability, $0.12 billion for medical malpractice, $0.31 billion for general liability, and $0.35 billion for the liability portion of multiperil insurance policies. Thus, the total ULAE in 1985 for all liability claims and suits was an estimated $2.78 billion, of which $2.00 billion was for auto liability claims and suits.

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[18] Data are not available on the percentage of multiperil ALAE that went for lawsuits. However, most (82 percent) multiperil liability compensation is paid through commercial multiperil insurance. Most of that compensation is for general (89 percent) instead of auto (11 percent) liability claims. (Interview with Mark Whitman, ISO, New York, October 20, 1986.) We would prefer to use a weighted average of the commerical auto and general liability numbers, but since the percentage of commercial auto ALAE that went for lawsuits is not available, we use the general liability percentage.

Table D.16

INSURERS' UNALLOCATED LOSS ADJUSTMENT EXPENSE PAID FOR VARIOUS TYPES OF CLAIMS

	Automobile Insurance Claims		Medical Malpractice Claims	
Year	Net ULAE Paid ($000)	Annual Percent Growth	Net ULAE Paid ($000)	Annual Percent Growth
1980	1,501,000	NA	41,936	N.A.
1981	1,645,000	9.6	49,782	18.7
1982	1,793,000	9.0	61,246	23.0
1983	1,889,000	5.4	59,031	-3.6
1984	1,893,000	0.2	79,018	33.9
1985	1,998,196	5.6	123,984	56.9
Average		5.6		21.3

	General Liability Claims		Multiperil Insurance Claims	
Year	Net ULAE Paid ($000)	Annual Percent Growth	Net ULAE Paid ($000)	Annual Percent Growth
1980	243,882	NA	629,338	NA
1981	270,409	10.9	695,983	10.6
1982	295,026	9.1	805,726	15.8
1983	309,366	4.9	957,729	18.9
1984[a]	254,325	−17.8	1,021,165	6.6
1985[b]	305,004	19.9	1,115,978	9.3
Average		2.8		12.7

SOURCES: Letters from Insurance Services Office, Inc., New York, to James S. Kakalik, The RAND Corporation, April 23 and October 16, 1986. Data were derived by ISO from analysis of Annual Statement Schedule P computer tapes from A. M. Best and Co., Oldwick, New Jersey. An interview with Paul Braithwaite of ISO on May 10, 1986, indicated that 56 percent of commercial multiperil ULAE is for liability claims, and less than 9 percent of homeowners' multiperil is for liability claims.

NOTE: Average annual percent growth rates were calculated at RAND by fitting a compound growth curve to the data points.

[a] Net ULAE paid for liability only in 1984, 323,000.

[b] Net ULAE paid for liability only in 1985, 353,000.

NA = not available.

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